TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1310.

BOOD CRUMPTON, ALIAS BOOD BURRIS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED SEPTEMBER 26, 1890.

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1 United States of America, western district of Arkansas. In the circuit court, February term, A. D. 188 .

UNITED STATES
vs.
BOOD CRUMPTON, ALIAS BOOD BURRIS. } Murder.

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That Bood Crumpton, alias Bood Burris, on the 3rd day of Nov., A.D. 1889, at the Cherokee Nation, in the Indian country, within the western district of Arkansas aforesaid, with force and arms, in and upon the body of one Sam. M. Morgan, a white man and not an Indian, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Bood Crumpton, alias Bood Burris, with a certain gun then and there charged with gunpowder and one leaden bullet, which said gun he, the said Bood Crumpton, alias Bood Burris, in his hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against and upon the said Sam. M. Morgan, and that the said Bood Crumpton, alias Bood Burris, with the leaden bullet aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder aforesaid, by the said Bood Crumpton, alias Bood Burris, discharged and shot off as aforesaid, then and there feloniously, wilfully, and of malice aforethought, did strike, penetrate and wound him the said Sam. M. Morgan in and upon the head, side, back, and belly of him the said Sam. M. Morgan, giving to him the said Sam. M. Morgan

2 then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the gun aforesaid by the said Bood Crumpton, alias Bood Burris, in and upon the head, side, back, and belly of him the said Sam. M. Morgan one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound he the said Sam. M. Morgan then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Bood Crumpton, alias Bood Burris, him the said Sam. M. Morgan in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

_____ _____,
United States Attorney, Western District of Arkansas.

(Indorsed:) No. . United States vs. . Murder.
A true bill. , foreman. Witnesses:
Filed, , 188 . , clerk.

3 *2nd Count.*

The grand jurors of the United States of America, duly selected, empaneled, sworn, and charged, to inquire in and for the body of the western district of Arkansas aforesaid, upon their oath present:

That Bood Crumpton alias Bood Burris, on the 3rd day of November, A. D. 1889, at the Cherokee Nation, in the Indian country, within the western

district of Arkansas aforesaid, with force and arms, in and upon the body of one Sam. M. Morgan, a white man and not an Indian, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Bood Crumpton alias Bood Burris with a certain club, which said club he, the said Bood Crumpton alias Bood Burris, in his hands then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did strike, beat and bruise and wound him the said Sam. M. Morgan, in and upon the head, side, back, and belley, of him the said Sam. M. Morgan giving to him the said Sam.
4 M. Morgan then and there aforesaid, with the club aforesaid in and upon the head, side, back, and belly of him the said Sam. M. Morgan one mortal wound of the depth of four inches and of the breadth of half an inch; of which said mortal wound, he the said Sam. M. Morgan then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Bood Crumpton alias Bood Burris him the said Sam. M. Morgan in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

WM. H. H. CLAYTON,
United States Attorney, Western District of Arkansas.

We the jury find the defendant, Bood Crumpton, guilty of murder in killing Sam. M. Morgan as charged in the 1st count of the indictment. 6, 30, '90.

D. B. COX,
Foreman.

(Indorsed:) No. 3. United States vs. Bood Crumpton alias Bood Burris; murder; a true bill. James C. Marshall, foreman. Witnesses: W. A. Burt, Christopher Harris, H. L. Hoyt, Milton M. Edmiston, Rich'd Morgan, James Lawson, Wm. R. Grider, Richard Colquit, Marg. Nicholson, James McLowery, Wm. Keys, Mater Harris. Filed Feb'y 7, 1890. Stephen Wheeler, clerk; by F. M. Dodge, D. C.

5 FRIDAY MORNING, 9 O'CLOCK, *February 7th*, 1890.

UNITED STATES
vs.
BOOD CRUMPTON, ALIAS BOOD BURRIS. } Indictment for murder, No. 3.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and makes known to the court that he is destitute of means and wholly unable to employ counsel in his behalf, and prays the court to appoint counsel to defend him in this cause, and the court being fully advised in the premises, it is ordered that Mess. DuVal, and Cravens Berkley Neal, and W. S. Wolfenburger be, and they are hereby, appointed council for said defendant, having had hearing of said indictment, and it being demanded of him concerning said indictment above specified and charged upon him how he would acquit himself thereof, he says he is not guilty as charged in said indictment, and puts himself upon the country.

FEBRUARY 12TH, 1890.

On this day comes the said defendant by his attorneys and files his application in writing, verified upon oath, praying for witnesses in his behalf at the expense of the United States.

Said application coming to be heard, and the court being fully advised in the premises, doth allow the same.

It is therefore ordered that the legal expense of procuring the testimony of Martha Harris, W. H. Burris, Charley Vann, Harrison Dukes, Joseph Harris, Wm. Ryder, Wm. Keys, and Dr. T. Harris in behalf of said defendant be paid by the U. States, and that a subpœna be issued for them, returnable May 11th, 1890, to which time, by agreement of parties, this cause is hereby continued.

APRIL 25TH, 1890.

6 On this day come the said defendant by his attorney and files his application in writing, verified upon oath, praying for witnesses in his behalf at the expense of the United States.

Said application coming on to be heard, and the court being fully advised in the premises, doth allow the same.

It is therefore ordered that the legal expense of procuring the testimony of John Hurst and Frank Lolles in behalf of said defendant be paid by the United States, and that a subpœna be issued for them, returnable May 12th, 1890.

MAY 19TH, 1890.

On this day come the defendant, by his attorneys, and files his application in writing, verified upon oath, praying for witnesses in his behalf at the expense of the United States.

Said application coming on to be heard, and the court being fully advised in the premises, doth allow the same.

It is therefore ordered that the legal expense of procuring the testimony of H. J. Kirks in behalf of said defendant be paid by the United States, and that a subpœna be issued for him, returnable forthwith.

MAY 26TH, 1890.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant, in custody of the marshal, and by his attorneys, Messrs. Wolfenburger, Neal, and Cravens, and it appearing from the returns of the marshal that said defendant has been served with a duly certified copy of the said indictment and a full and complete list of the witnesses in this
7 case, and has also been served with a full and complete list of the petit jury, as selected and drawn by the jury commissioners more than two entire days heretofore; and having heretofore had hearing of said indictment and pleaded not guilty thereto, it is, on motion of plaintiff, by his attorney, ordered that a jury come to try the issue joined. Whereupon the clerk called the entire panel of the petit jury, and after challenge by both plaintiff and defendant, the following were selected for the trial of this cause, to wit:

Jarvis L. Barker, Luther R. Burkley, Joseph H. Criner, William F. Cliff, David Coulson, Geo. W. Cooper, dooley B. Cox, Franklin W.

Dunn, Geo. T. Galloway, John M. Haines, Robert Henderson, Nat Jackson, twelve good and lawful men of the western district of Arkansas, duly selected, empaneled, and sworn, to try the issue joined, and a true verdict render according to the law and the evidence; and after hearing a portion of the evidence, and there not being time to further progress in the trial of this cause, they were put in charge of a sworn bailiff of this court.

And it is further ordered by the court that said jury be kept together and the marshal of this district furnish meals and lodging to said jury and bailiff in charge until discharged by order of said court.

MAY 28TH, 1890.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the
8 said defendant in custody of the marshal and by his attorneys, Messrs. Wolfenburger, Neal, and Cravens, and now come the jury heretofore empaneled for the trial of this cause in charge of a sworn bailiff of this court, to wit:

Jarvis L. Barker, Luther R. Burkley, Joseph H. Criner, Nat Jackson, David Coulson, Geo. W. Cooper, Dooley B. Cox, William F. Clift, Geo. T. Galloway, John W. Haines, Robert Henderson, Franklin Dunn, who took their seats in the jury box, and *and* after hearing further evidence and there not being time to further progress in the trial of this cause, they were put in charge of the sworn bailiff aforesaid.

MAY 29TH, 1890.

On this day come the United States of America, by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and by his attorneys, Messrs. Wolfenberger, Neal, and Cravens.

And now come the jury heretofore empaneled for the trial of this cause, in charge of a sworn bailiff of this court, to wit:

Jarvis L. Barker, Luther R. Burkley, Joseph H. Criner, Wm. F. Clift, David Coulson, Geo. W. Cooper, Dooley B. Cox, Franklin W. Dunn, Geo. T. Galloway, John W. Haines, Robert Henderson, Nat Jackson, who took their seats in the jury box, and after hearing further evidence, and there not being time to further progress in the trial of this cause, they were put in charge of the sworn bailiff aforesaid.

9 MAY 31ST, 1890.

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and by his attorneys, Messrs. Wolfenberger, Neal, and Cravens; whereupon the defendant files his application in writing, verified upon oath, praying for witnesses in his behalf at the expense of the United States.

Said application coming on to be heard, and the court being fully advised in the premises doth overrule said application. And now come the jury heretofore empaneled for the trial of this cause in charge of a sworn bailiff of this court, to wit:

Jarvis L. Barker, Luther R. Burkley, Joseph H. Criner, William F. Clift, David Coulson, Geo. W. Cooper, Dooley B. Cox, Franklin W.

Dunn, Geo. T. Galloway, John M. Haines, Robert Henderson, Nat Jackson, who took their seats in the jury box, and after hearing further evidence, and there not being time to further progress in the trial of this cause, they were put in charge of the sworn bailiff aforesaid.

JUNE 2ND, 1890.

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and by his attorneys, Messrs. Wolfenberger, Neal, and Cravens, and now come the jury heretofore empaneled for the trial of this cause, in charge of a sworn bailiff of this court, to wit: Jarvis L. Barker, Luther R. Burkley, Joseph H. Criner, Wm. F. Clift, David Coulson, Geo. W. Cooper, Dooley B. Cox, Franklin W. Dunn, Geo. T. Galloway, John M. Haines, Robert Henderson, Nat Jackson, who took their seats in the jury box, and, after hearing the balance of the
10 evidence and the argument of council, and receiving the charge of the court, retired in charge of a sworn bailiff aforesaid to consider their verdict.

JUNE 3RD, 1890.

On this day come the United States of America by Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, and come the said defendant in custody of the marshal, and by his attorneys, Messrs. Wolfenberger, Neal, and Cravens, and now come the jury heretofore empaneled for the trial of this cause, in charge of a sworn bailiff of this court, to wit: Jarvis L. Barker, Wm. F. Clift, David Coulson, Geo. W. Cooper, Luther R. Berkley, Dooley B. Cox, Franklin W. Dunn, Geo. T. Galloway, Joseph H. Criner, John M. Haines, Robert Henderson, Nat Jackson, who returned into court the following verdict, to wit:

"We, the jury, find the defendant, Bood Crumpton, guilty of murder, in killing Sam M. Morgan, as charged in 1st count of this indictment."

(Signed) D. B. COX,
Foreman.

Whereupon the jury was discharged by the court from the further consideration of the case, and the said defendant remanded to the custody of the marshal to await final sentence.

11 In the district court of the United States for the western district of Arkansas, May term, 1890.

SATURDAY MORNING, 9 O'CLOCK, *August 2nd*, 1890.

Court met pursuant to adjournment. Present, the honorable I. C. Parker, judge of the district court of the United States for the western district of Arkansas.

UNITED STATES
vs.
BOOD CRUMPTON alias BOOD BURRIS. } Indictment for murder. No. 3.

On motion of Wm. H. H. Clayton, esq., attorney for the western district of Arkansas, the said defendant, Bood Crumpton alias Bood Burris,

was brought to the bar of the court in custody of the marshal of said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty, heretofore returned against him by the jury in this cause, on the 3d day of June, 1890, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said.

Whereupon, the premises being seen and by the court well and sufficiently understood, it is considered by the court that the said marshal of the district aforesaid cause the said Bood Crumpton alias Bood Burris to be taken hence, and him, the said Bood Crumpton alias Bood Burris safely and securely keep, from the date hereof, until Wednesday, the 1st day of October, A. D. 1890, and on that day, and between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of said day, the said marshal cause the said Bood Crumpton alias Bood Burris to be taken to some convenient place within this district, to be appointed by said marshal, and then and there, between the said hours of nine o'clock in the forenoon and five o'clock in the afternoon, on Wednesday, the said day of October, in the year of our Lord one thousand, eight hundred and ninety, cause the said Bood Crumpton alias Bood Burris to be hanged by the neck until he is dead.

And it is further considered by the court, that the United States of America do have and recover all their costs in and about this prosecution laid out and expended and that they have execution therefor.

And the clerk of this court is hereby required to furnish the marshal of this district with a duly certified copy of this judgment, sentence, and order, which shall be returned by said marshal, with a full and true account of the execution of the same.

UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States for the western district of Arkansas, hereby certify, that the above and foregoing is a true and correct copy of the judgment, sentence, and order in the above-entitled cause, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fort Smith, in said district, this 2d day of Aug., A. D. 1890.

STEPHEN WHEELER, *Clerk.*
By I. M. DODGE, *D. C.*

12 In the circuit court of the United States for the western district of Arkansas.

THE UNITED STATES,
vs.
BOOD CRUMPTON, ALIAS Bood Burris. } Murder.

Be it remembered, that on the trial of the above-entitled cause the Government, to maintain its issues upon its part, produced the following-named witnesses, who severally testified:

James M. Lawson, Robert Morgan, Milton M. Edmiston, Mattie Har-

ris, Mary Nicholson, H. L. Hoyt, James M. Lowry, Harrison Dykes, Richard Colquitt, W. A. Burt, Wilson Rider, W. K. Grider, Christopher Harris, Bill Keyes, Charley Glass, William Maclemee.

The following is a copy in full of the above-named witnesses:

13 U. S.)
v.)
CROMPTON.)

MAY 27TH, 1890.

JAMES M. LAWSON.

Col. CLAYTON. Where do you reside?

A. 4½ miles east of Muskogee, in the Cherokee Nation.

Q. That would be pretty close on the Arkansas river?

A. Yes, sir; right on the bank.

Q. Do you know where Lowry lives?

A. Yes, sir.

Q. How far do you live from him?

A. I couldn't tell you.

Q. Two or three miles?

A. Yes, sir; probably a little further.

Q. Did you know Sam M. Morgan in his lifetime?

A. Yes, sir.

Q. How long had you known him?

A. Something near a year; not hardly a year.

Q. Is he alive or dead?

A. He is supposed to be dead.

Q. If you found the body which is supposed to have been his state when it was, what time of day, how you came to find it, where it was, and the condition in which you found it?

A. On the 22nd of December, 1889, last, I was hunting; my brother and cousin were with me; Joseph and John Lawson. I was walking down the Arkansas River bank, and smelled something, and went out to a hole, right near the river bank, and there I discovered a part of a skull sticking out from under the edge of the bank, and I broke down a weed and pryed, and I was convinced that it was a skull of a person.

Q. A human skull?

A. Yes, sir; and I hollered for my brother and cousin; they was over in the woods a little ways, and they came over, and I broke down another stick, a dogwood limb, and pryed it out, and they were convinced
14 it was a skull, and I saw one knee sticking up out of the dirt. We couldn't see the whole body; there was dirt and trash over the body.

Q. What kind of dirt and trash?

A. Well, just—I can't tell you exactly what kind; some leaves and dirt.

Q. Ordinary dirt?

A. Yes, sir; dirt.

Q. Anything else?

A. Yes, sir; some sticks, chunks, standing down endways, leaning against the bank in the hole.

Q. How far from the back was this hole?

A. I never measured it; I think it was about 15 feet; it might be a little further.

Q. That was a bank in the river, and then a level surface?

A. Yes, sir.

Q. Was it not a level surface above?

A. There was a level place above, 20 or 30 feet, then a little bank, and this hole was on what we termed the second bank.

Q. Was it on the top of the bank?

A. It was on the top of the level ground.

Q. Back about 15 feet from the top of the second bank or first?

A. It was about 15 feet from the river bank.

Q. What made the hole?

A. It looked to me as though it was where a large tree had been rotted and burnt out.

Q. How deep was it?

A. I couldn't tell you; it was between 4 and 7 feet, I believe; I guessed it about 6 feet.

Q. You simply discovered the head and knee. How was the head?

A. It was lying against the edge—against the bank of the hole.

Q. Was it so you could recognize the man?

A. No, sir; most all the flesh was off the head, and it looked to me as though it was broken some place in the head; I think right there was gone [points to forehead]; I think it was the front part of the head.

Q. You found a portion of the skull broken?

A. Yes, sir.

Q. You meant the forehead?

A. Yes, sir; I think.

15 Q. What did you do then?

A. I went about half a mile to the first house and notified a man by the name of France. I then went to another house just beyond that and notified a man by the name of Tucker, and went home then, and sent a colored boy to a man by the name of Mc'Namee's.

Q. Did you go back any more?

A. No, sir; Christmas eve I went back with Mr. Edmiston and two others.

Q. When you got to the place on Christmas eve where was the body?

A. It was taken up and lay right by the hole.

Q. Did it have clothing on?

A. Yes, sir.

Q. What kind?

A. I couldn't tell you; it had on a light suit of clothes, though; I think a small check.

Q. Was there anything taken from the pockets?

A. I think Edmiston and some more taken a pocketbook and some papers.

Q. Would you recognize them if you saw them?

A. No, sir; I don't know that I would.

Q. Did he have a hat?

A. There was a hat by the body after it was taken up.

Q. What kind of a hat?

A. A black hat.
Q. Anything else about it you could identify it by?
A. I don't think there is.
Q. Would you know that hat if you saw it?
A. I don't know.
Q. Did you notice whether there were any holes in it?
A. I think there was a hole in it; yes, sir.
Q. Do you remember at what point?
A. I don't, exactly; it seems to me though it was on the side, but I don't know just how it was.
Q. What time of day did you find the body?
A. Between 11 and 3 o'clock some time; it must have been right near one.

16 Q. You started home and told the people about the body you found?
A. Yes, sir.
Q. You went there again on Christmas eve?
A. Yes, sir.
Q. It was on the 22nd you found the body, and went there again on the 24th, and saw the body had been taken out of the hole. You noticed the first day you were there this place in the skull?
A. Yes, sir.
Q. Could you tell what made it by the appearance?
A. No, sir.
Q. Do you remember the extent of the crushed place in the skull?
A. No, sir.
Q. In thought may be you saw it on Christmas eve?
A. Yes, sir, I did; but I don't remember just how it was; I didn't pay much attention to it on Christmas eve.
Q. This was the body of a man who was dead. Do you know who it was?
A. No, sir.
Q. Did you see the papers taken from his person?
A. Yes, sir; I don't remember seeing them taken just exactly from his perssn, but I saw Mr. Edmiston reading them.
Q. Do you know who took them?
A. There was several.
Q. Did the body have a watch on it?
A. It seems to me the watch on it had been taken off before I got there I noticed them all looking at the watch.
Q. You could not see the watch the day you were there first?
A. No, sir; for the body was covered. I couldn't only see down to about there—to about the shoulders.
Q. Where did you find the body; on whose place was it?
A. On Lowry's place; on what is known as the O'Neal farm.
Q. That was in the Indian country, in the Cherokee Nation?
A. Yes, sir.

17 Q. It was in James Lowry's field, and in the woodland part of the field close to the river?
A. Yes, sir.

Q. You could not see enough of the body to discover whether it was a white man or an Indian?

A. No, sir.

Cross-examination:

Col. CRAVENS. How far do you live from the Lowry place, where the body was found?

A. I expect about 3 miles.

Q. Above or below?

A. Well, above; on Coody's Creek, I live.

Q. Which side of Coody's Creek do you live on?

A. I don't know exactly; I live on the side Muskogee is on.

Q. That would be the north side. What is the general direction of Coody's Creek? It heads out south of Muskogee, does it not?

A. Southwest of Muskogee, I reckon.

Q. How far is Muskogee from the creek?

A. Must be a mile and a half—well, one part of it, the edge of Muskogee runs right down to the creek; right near it.

Q. The general course of it from there is east, is it not?

A. Well, yes, sir; a little north of east.

Q. How far do you live from Muskogee?

A. About 4½ miles.

A. You were not able to recognize the body you found there. Did you know Sam Morgan?

A. Yes, sir.

Q. You were not able to identify that as Sam Morgan's body?

A. No, sir.

Q. Or anything that was there as his property?

A. No, sir.

Q. You don't know whether it was him or not?

A. No, sir.

Q. This was on the 22nd of December?

A. Yes, sir.

Q. You went back on the 24th?

A. Yes, sir.

Q. When you found these remains in this hole you went right away and notified some people?

A. Yes, sir.

Q. Do you know whether they went that evening or not?

A. They said they went; they said they were going, and when
18 I came back they said they did.

Q. You didn't go back that evening, nor the next day, but you went back the second day after that?

A. Yes, sir.

Q. What time of day?

A. I couldn't tell you. We must have started about 11 o'clock.

Q. Were the remains still there when you got back?

A. Yes, sir.

Q. Had they been taken out of the hole yet?

A. Yes, sir.

Q. Where were they?

A. They were lying up on the bank, at the edge of the hole.

Q. This was in the field, and it is about 15 feet, you say, from the bank—from the top of the bank of the river?

A. Yes, sir; as near as I can guess.

Q. Is there a fence along there?

A. I think there is—a brush fence begins right near, and runs right back of the hole.

Q. The brush and the bank make the fence?

A. Yes, sir.

Q. There is no road along there then, on the outside?

A. No, sir.

Q. Between the wood and the field?

A. No, sir.

Q. Did you know this defendant at that time?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. I don't know; something near a year; that is, I had seen him about a year before.

Q. Do you know where he lived at that time?

A. I understood he was at Mrs. Harris'

Q. How far was that?

A. I don't know whether he was boarding at Mrs. Harris' or not, for certain.

Redirect:

Col. CLAYTON. You are not positive he was boarding at Mrs. Harris'?

A. No, sir.

19 Q. Wasn't it the deceased that was boarding at Mrs. Harris'?

A. Yes, sir.

Q. But Mr. Crumpton had not been there?

A. I don't know whether he was boarding there or not.

Q. What was his name before he was brought here?

A. I knew him as Bood Burris, and since he has been here I have known him as Crumpton.

Q. Is he a white man or an Indian?

A. I suppose he is a citizen of the Cherokee Nation.

Q. What was the other man, Morgan?

A. He was a white man, I think.

Col. CRAVENS. Didn't he claim to be an Indian?

A. I don't know whether he did or not.

Col. CLAYTON. Do you know whether this defendant was a married man or not?

A. I don't think he was; I don't know, though.

Q. The other man was not.

A. I don't think he was either.

Q. How old a man was Sam. M. Morgan?

A. I don't know; I suppose right near thirty. He might have been 32 or 3, and might not have been more than 26.

Col. CRAVENS. You say he was known up there before this affair as Burris?

A. That's all I ever heard him called.

Q. Do you know his stepfather?
A. Yes, sir.
Q. What is his name?
A. Burris.
Q. Burris is not understood to be his father?
A. No; I think not.
Q. The understanding is there that this Burris married Bood's mother?
A. Yes, sir.
20 Q. And his father's name was Crumpton?
A. Yes, sir.

ROBERT MORGAN.

COL. CLAYTON. Where do you live?
A. A little east of Muskogee, Cherokee Nation.
Q. Do you know the defendant in this case?
A. Yes, sir.
Q. Did you know Sam. M. Morgan?
A. Yes, sir.
Q. In his liftetime?
A. Yes, sir.
Q. Were you related to him?
A. Yes, sir; we were brothers.
Q. Do you know how he signed his name when he put it to paper?
A. S. M. Morgan. His name was Samson Monroe Morgan. They always called him Sam.; he went by the name of Sam.
Q. Do you know whether he is dead or alive?
A. Well, I could swear to the best of my knowledge that was his body was found up there.
Q. Then you say he is dead?
A. Yes, sir.
Q. Where did you see his body?
A. I seen it lying right up at the hole where it was taken out.
Q. Where was that?
Q. Up there in Gooseneck Bend on the back of the Arkansas River in the Cherokee Nation.
Q. Were you present when this map was made?
A. Yes, sir.
Q. Where did you find the body (showing map)?
A. Right there.
Q. That is correctly located?
A. Yes, sir.
Q. The field was right on the bank of the river?
A. Yes, sir; that was a brush fence there and a rail fence runs right there. When I went there Mr. Lowry sent a man with us. That is Coody's Creek, and we crossed the fence right there.
Q. The brush fence next the river?
A. Yes, sir.
Q. What day was it you went there?
A. On the 24th December.
21 Q. That was Tuesday in last year?

A. Yes, sir; the day before Christmas.

Q. You found the body you say lying out of the hole?

A. Yes, sir.

Q. What did the hole look like?

A. It looked like it might be some 5 or 6 feet deep, may be deeper, and about 4 feet at the top round.

Q. Was there anything about it by which you could tell how the hole was made?

A. I never noticed particularly. Mr. Lowry said, or some of them said, it was where a cottonwood tree or stump had rotted out.

Q. What was its condition?

A. All the flesh and everything was away from the head and just the bones and part of one side of the head, all in here; the jaw was gone.

Q. Was it gone, entirely gone?

A. They never found it; there was one of his jaws gone.

Q. How much of the skull was there?

A. To the best of my knowledge this part in here, the forehead part of it, was gone, and part of it looked like it had been knocked out and part of his teeth and jaws.

Q. Did you notice particularly the range of that?

A. No, sir; I just saw it was all out in here; the bones all in here was out. I don't remember which side of the face it was on; it seemed to range down along the side.

Q. The place where the bone was taken away?

A. Yes, sir.

Q. Did the body have any clothing on it?

A. Yes, sir; a suit of gray striped clothes, gray mixed or checked rather.

Q. Did you recognize the clothing?

A. Yes, sir.

Q. Whose were they?

22 A. They were just precisely like my brother wore off, and he always wore.

Q. Did you see a hat there?

A. Yes, sir.

Q. What kind of a hat was it?

A. A black hat.

Q. Anything about it?

A. There was a hole in the brim of it here. He had been wearing a black hat just before he went off.

Q. Would you know the hat if I would show it to you?

A. Yes, sir; the one we found there.

Q. See if that is it [handing hat to witness]?

A. Yes, sir; that is the hat.

Q. That is the bullet hole you spoke of being in the brim of it?

A. Yes, sir.

Q. You pronounce that a bullet hole there do you?

A. Yes, sir; that is my judgment about it.

Col. CLAYTON. I introduce the hat in evidence. (To witness.) Was that hole in that hat when you saw it?

A. Yes, sir.

Q. After you found the body?

A. Yes, sir.

Q. That hole was there. You speak of a crushed place in the head where the bone was gone?

A. Yes, sir.

Q. Do you know whether it went down this way?

A. It just seems to me like that much; seems like his nose was gone, and knocked out part of his jaw bone; part of his jaw bone was gone.

Q. Do you remember if anything else was found upon the body?

A. There was quite a number of papers taken from his body.

Q. Were you present?

A. Yes, sir.

Q. Who took them?

A. Mr. Edmiston, I think.

Q. Would you know them if you were to see them.

A. I think so.

Q. Anything else besides the papers.

A. Knife handles, and a couple of keys.

23 Q. (Showing envelopes and letters to witness.) Examine them.

A. Yes, sir; these are the ones Mr. Edmiston taken off of the body.

Q. These letters, I suppose, were inside of the envelopes, or do you know?

A. I don't remember; I believe, though, they was.

Col. CLAYTON. I will introduce the envelopes anyhow. (To the witness.) You say he signed his name S. M. Morgan.

A. Yes, sir.

Q. Where was his post office?

A. At Muskogee. I saw them taken from the body when I got there. They hadn't unbuttoned his vest.

Q. There are three letters; I don't care to introduce the letters because there is nothing in them. (To the witness.) There is a receipt; was that found on his body.

A. Yes, sir.

Q. I will introduce the receipt because it has got Morgan's name on it. (Above receipt is hereto attached, and marked Ex. O.) I expect I had better introduce the letters. [Introduces letters marked Exhibit No. 1, 2, & 3, in pencil, and also envelopes marked Exhibits A, B, & C, with a dash under each one of them. All the above exhibits are hereto attached at the end of the testimony.] (To the witness.) These you saw taken out of the pocket of the dead man?

A. Yes, sir; when I got there they hadn't unbuttoned his vest.

Q. Do you know a person by the name of Toliston?

A. Yes, sir.

Q. Where did she live?

A. In Arkansas at that time.

Q. (Reading.) "Mr. C. M. Morgan, please let bearer have my" something. I have heard of him having a receipt, but never seen it. I had a note. I had his note once for a hundred dollars.

24 Q. Is that your brother's signature?

A. Yes, sir.

Q. That is his handwriting?

A. Yes, sir.

Q. The one you claim is dead?

A. Yes, sir.

Q. You speak of some knives being taken from his pocket. See if these are the knives; one is a knife handle, and the other is a knife?

A. I didn't notice the knives particularly; it seems like they are the knives, but I wouldn't swear it. I know that key; it belongs to a lock I have got at home. I have got a little red padlock at home, and we had two keys, and he carried one and I carried the other.

Q. Was that carried on the body of your brother?

A. Yes, sir.

Q. And you know the key?

A. Yes, sir; it is just like the one I have.

Col. CLAYTON. I will introduce the key in evidence. (To the witness.) Do you know whether your brother had a mustache?

A. Yes; a very long one.

Q. What color was it?

A. It was rather sandy when it wasn't blacked; he most always kept it blacked.

Q. Do you know whether that was found at the body or not [handing some hair to witness].

A. Yes, sir; I saw some of them pick it up.

Q. What did you take it to be?

A. It looked like part of his mustache.

Q. Did he have a mustache like that?

A. Yes, sir; about as long as that is—of course, we might be mistaken. I seen that down there.

25 Col. CLAYTON. The piece of hair which the witness designates as his brother's mustache, taken from the body, I introduce in evidence. (To the witness.) Was there anything else taken from the body, you remember?

A. I remember his shirt. I could identify his shirt.

Q. No watch?

A. Yes; his watch had been taken before I got there; I didn't see that.

Q. Do you know whether Miss Toliston and your brother had been corresponding?

A. He said they were corresponding.

Q. Do you know whether your brother was paying any attention to Miss Toliston down there?

A. Nothing more than he said he was corresponding with her. He knew the lady, so did I.

Q. How old was your brother?

A. If he had lived until the 21st of April, last, he would have been 28 years old.

Q. An unmarried man?

A. Yes, sir.

Q. Was Emma Toliston an unmarried woman?

A. Yes, sir.

Q. Now then produce the watch. From whom did you get this watch?

A. From Col. Edmiston, I believe.

Q. Did you go down with him to the body?

A. No, sir; he was there when I got there.
Q. Do you know the watch?
A. No; I couldn't swear to the watch.
Q. Did you know it before?
A. No, sir.
Q. But you received it from Mr. Edmiston that evening?
A. Yes, sir; while we were there at the hole.
Q. Did you receive the watch and chain just as it is?
A. Yes, sir.
Q. You didn't see him take it from the body?
A. No, sir.
Q. Have you had it ever since?
A. Yes, sir.

Q. When did you last see your brother alive?

26 A. On Sunday morning, about the 3rd day of November last, 1889.

Q. Where?
A. I saw him riding along the road.
Q. Anybody with him?
A. Yes, sir; the defendant there was with him.
Q. That is, your brother S. M.?
A. Yes, sir.
Q. Where did you see them?
A. They were riding along the road that leads right out to where he was found.
Q. Near whose place?
A. Right around Charley Gann's field; right in front of the house where Colquet lived then; they turned the corner of the field there.
Q. Were they riding in the road?
A. Yes, sir.
Q. What kind of a horse was he riding and whose was it?
A. I believe that my brother was riding the spotted horse that he had in his possession at that time.
Q. What horse was the defendant riding?
A. My recollection is he was riding the grey horse that my brother also had in his possession.
Q. (Showing map to witness.) Point out where you saw him and which way he was going.
A. When they got here one of them hollered; that called my attention, and we seen them riding; my brother was a little in front in the road and we seen them until they got along about here, Colquet and me.
Q. Where were you sitting?
A. We were sitting right out here at the back of the house.
Q. Now, you and who else?
A. Me and Colquet and Burt.
Q. Going in what direction to the turn of that road?

A. No, sir; a west direction. The last I seen them, I reckon

27 they were about here.

Q. When you first seen them, though?
A. They were about the corner of the field.
Q. Have you ever seen him since?

A. No, sir; not alive since.

Q. You saw him riding in that direction you have indicated on the map, on the 3rd day of November last?

A. Yes, sir.

Q. That day was Sunday?

A. Yes, sir.

Q. You never saw your brother after that alive?

A. No, sir.

Q. When did you next see the defendant?

A. He came to my house Tuesday morning some time along about the forepart of the day, I believe about 11 o'clock; when I went to the house he was there. After this Sunday on Tuesday.

Q. What was his business?

A. When I went into the house he came in, and when he came in, after setting down a few minutes, says he, "Here is an order Sam sent you on Rufe Dyer for $10.00." I said to him Rufe don't owe him $10.00. He did owe him but he paid him at the time of the fair. I just laid it up on the mantelpiece and my wife picked it up and read it and she said "that is not Sam's handwriting." Then I picked it up and looked at it. I let Mr. Dyer have it. I didn't think of him being dead.

Q. It wasn't in your brother's handwriting?

A. I don't think it was. It read: "Rufe Dyer, please pay Bob $10.00 for me, as I am going off and will not get to see you any more." I don't think it was in his handwriting; it didn't resemble that at all. (Pointing to paper on table.)

Q. The defendant, on Tuesday after your brother was missing, came with an order for $10.00 on Rufe Dyer. What was he doing; showing it to you?

28 It was written to me; it was to be paid to me.

Q. Did you have any talk with him at that time as to where your brother was?

A. No; I didn't ask him anything about him at that time; he didn't stay but a few minutes.

Q. You hadn't seen him before that?

A. No, sir.

Q. Did you ever see those horses after your brother was missing?

A. Not until that morning; he rode one down that morning—Tuesday morning—he rode the grey horse down to my house.

Q. State what was done then; what became of the horses?

A. Well, I will have to go back to get to the story. My brother and I had had, some time before that, a little quarrel about one of the horses he got from me, and promised to pay for it. He got the grey horse from me. I didn't think he was treating it just right. He said he wasn't going to give me the horse nor pay for it unless I could make him pay for it by law. I went to the agent and got an order for the horse and was going to take it away from him. He told me he would give me his note and I was going to take the horse away from him. He said if I would let him keep it he would give me his note. I told him if he would and give me security for it he could keep the horse. He gave me his note and security on it for $100.00, Mr. Ramsey for security. He was to pay it any time; it was due any time after date; it was due on or before the 1st day of December,

and he gave it to me somewheres along about October. Now, when he went off and left on Sunday evening Mr. Ramsey came down *at* my house and said: "Sam is gone and left everything in Bood's care."

Q. You learned he was gone and his property was turned over
29 to him.

A. Yes, sir; and he would 't give up anything at all.

Col. CRAVENS. Bood never told you that?

A. No, sir.

Q. Then you need not state it.

A. I learned my brother was gone and had turned over everything to him. Next morning I went down and Mr. Ramsey and Will Burt and Monroe Colquet——

Col. CLAYTON. Mr. Ramsey was on the note?

A. Yes, sir; we went down and had an attachment run on everything he had. Mr. Colquet had an interest in the other horse—the spotted horse—and Ramsey and I went down and had an attachment run on everything my brother had to hold them until he come back. I learned from 2 or 3 different parties brother had gone and where he was gone and I couldn't trust the defendant much, so I had an attachment run on everything he had so I could get my money out of it. In that way I got hold of both of the horses on Tuesday.

Q. Did you give bond?

A. Yes, sir.

Q. Where did you find the horses?

A. I found one of them at Black Hoyt's, in a lot; the grey horse at Black Hoyt's, and the spotted horse at Bill Burris'.

Col CRAVENS. When was it you got the attachment?

A. On Monday, the next day after I seen them going off together.

Q. What relation, if any, is Burris to the defendant?

A. He is his stepfather, that is all.

Q. Where was the defendant living at that time?

A. I think he was staying at Mr. Hoyt's; he was at Hoyt's when I got the grey horse up there.

Col. CLAYTON. These two horses you got in that way?

A. Yes, sir.

Q. The defendant, when he came to your place on Tuesday, he was riding a grey, you say?

30 A. Yes, sir; the marshal didn't get out there until 12 o'clock. In the morning when he came there he rode up to Hoyt's, and about the time he got there the marshal run an attachment on him.

Q. You didn't know your brother was dead at that time?

A. No, sir; I heard he had left the country, and that he had gone; I had been told by different parties.

Q. And you believed he had gone?

A. Yes, sir; and to save myself, I had an attachment run out to hold it until I could get my money out of it.

Q. And you found one at defendant's father-in-law's, and the other at Hoyt's, where he was living?

A. Yes, sir.

Q. When he came there to your place, on Tuesday, on the horse, you say he didn't say anything about where your brother was?

A. No, sir; I had been told by different parties he was gone, and I didn't believe anything he said about it, only he was gone.

Col. CRAVENS. Just answer the question. You believed he was gone?

A. Yes, sir.

Col. CLAYTON. That was in November?

A. Yes, sir; the 5th or 6th of November.

Q. Did you see anything more of the defendant around there?

A. It was some time after that. I seen him once in a while after that, along there.

Q. Did you ever have any talk with him about your brother after that?

A. Nothing, only when he brought me that letter.

Q. Explain about that let'er?

A. He brought me a letter, and I don't believe I had ever had any conversation with him until he brought that letter.

Q. When was that?

31 A. About the first day of December, he brought it to my house.

Q. What letter?

A. That he pretended that was pretended to be written from the Pawnee Agency, and signed by S. M. Morgan. It was the first day of December.

Q. About a month after your brother was missing?

A. Yes, sir.

Q. Who brought the letter?

A. The defendant there.

Q. What became of the letter?

A. I don't know; he carried it off. I read the letter.

Q. Where was the last you saw the letter?

A. I handed it back to him, and that is the last I seen of it.

Q. That renders its contents competent. You got the letter?

A. Yes, sir.

Q. Did you read it?

A. Yes, sir.

Q. Then you handed it back to the defendant?

A. Yes, sir.

Q. Who was the letter purported to be signed by——

A. S. M. Morgan.

Q. That is your brother's name?

A. Yes, sir.

Q. Did you see the envelope?

A. No, sir; there was something said about the envelope, and he said something about the children tearing it. He mentioned it himself, I think; that is the morning that the children tore it up.

Q. You didn't see any direction?

A. No, sir.

Q. Was there any heading to the letter?

A. Yes, sir; it was headed "Pawnee Agency——

Q. And purported to come from your brother? Can you remember enough of its contents to tell the jury what the letter said?

A. Most of it. He commenced about this——

32 Col. CRAVENS. We object to it.

The COURT. What is the objection?

Col. CRAVENS. Well, it is what this other party said. It is not the declaration of this defendant. There is no effort made to get the writing. It is making secondary evidence admissible.

The COURT. You can not do that, when it is in the hands of the other party. If the defendant has the writing let him produce it.

Col. CRAVENS. We are not producing our evidence now.

The COURT. Very well; you have notice now that they have traced this letter to the defendant's hands.

Col. CLAYTON. I now move the court that he be required to produce that letter now.

The COURT. When it is traced to the possession of the defendant, it is competent.

Col. CRAVENS. We save the point.

Col. CLAYTON. State to the jury the contents of that letter, as near as you can remember.

A. "The Pawnee Agency"—I don't remember the date of it—"Mr. Bood Compton, my dear friend: As I have written to you twice and got no answer, I will write to you again, and I guess that by this time you have about got my cotton gathered. How are you getting along with everything? I guess by this time you about got my cotton gathered. Turn Bob over my grey horse, and tell him to take Ramsey's name off of my note. Pay Hoyt $40.00 for me, and I will do what is right, for I can't get there before the 15th of December. How is my spotted horse
33 getting along, and also how is my girl getting along. Lena Thompson says to tell Grider to come out here and get him a home." That is the contents of the letter as well as I can remember.

Q. Who was Lena Thompson?

A. A widow that lives out on the Cherokee Strip.

Q. And this letter was signed?

A. Yes, sir; S. M. Morgan.

Q. And this letter he handed to you?

A. Yes, sir; along about the 1st of December. He said he got a letter from Sam, and he said, "Here it is," and I read it.

Q. Did you observe it to see what handwriting it was in?

A. No, I didn't; it was written with plain handwriting. I believed he was gone, and believed it was his handwriting; I didn't notice particularly. It was spelled bad. My brother always spelled well. It was plain, well written.

Q. Your brother spelled well?

A. Yes, sir. He wrote a plain hand, and that is the reason I never noticed it particularly. I believed he was gone.

Q. You had no suspicion at that time that he was dead?

A. No, sir; not one bit in the world.

Col. CRAVENS. I object to putting answers in the witness' mouth?

Col. CLAYTON. Had you, at that time any suspicion that your brother was dead?

A. No, sir; not one bit.

Q. That was upon the first day of December?

A. Yes, sir.

Q. You gave him the letter, and he took it away with him?

A. Yes, sir.

Q. Did you have any other talk with him about this matter?

34 A. No, sir; none. I seen him a time or two, and asked him if he heard anything more from Sam. He said he hadn't.

Q. Did you ever pay the defendant any money?

A. Yes, sir; he came to me—I don't remember what month it was, November or December—he came up there one day. I was at Harnage's, and he said Sam owed him (I think it is $15.00 down there in the commissioner's papers). There is some mistake, I think he said $8.00 Sam owed him, for picking cotton. It is $15.00 there I think. I told him that under the circumstances I couldn't pay him. He claimed that he had picked $5.00 worth of cotton before the fair; but my brother he hadn't picked any cotton but just a little before the fair, and I was aware of the fact that my brother paid him for all he picked before the fair. And he claimed $3.50 he picked after the fair. I told him I would pay him for all he picked since the fair, and I paid him $3.50. He said my brother left him in the "soak;" that he gave my brother all he had when he went off.

Q. Did he name the amount he gave your brother?

A. No; he didn't say. He just said he gave him all he had.

Q. Do you know your brother's pistol?

A. Yes, sir.

Q. [Producing pistol.] Examine that pistol, and see if it is your brother's?

A. Yes, sir; when he first got it back, there was just a small speck right there, and that screw, it had been made over, and sent off to get nickel plated, and that was the old screw that was in it. I noticed that when it came back. All the other screws were new, and the handle didn't fit like it ought to. I noticed that right at the start.

Q. Do you say that is his pistol?

A. Yes, sir; that is his pistol.

35 Q. I will not introduce the pistol yet. I only want to prove by him that it is his brother's pistol. (The pistol was here shown to the jury, and the marks of identification testified to by the witness.) (To the witness.) It wasn't until a few days before Christmas that the body was found?

A. No, sir.

Q. You spoke of the clothing your brother wore. Did you say he wore the clothing?

A. Yes, sir; he wore a kind of grey, mixed check suit, and had on a flannel shirt; it was white with blue stripes running straight up and down, and a pair of suspenders, white, with raised flowers on them, and a pair of shoes, laced shoes, and pieces sewed in around this way, and around the top, fastened with hooks.

Q. Did your brother own a pair of that kind?

A. Yes, sir; the last time I seen him he had on a pair of that kind.

Q. And when you went to the body, you found a pair of that kind?

A. The reason I remember the shirt so well, Oscar Colter, when he was captured, he left that shirt at my house, and when my brother came out there, he asked me for that shirt, and I gave it to him. I asked them to unbutton the vest and let me see the shirt, and they did, and I found he had on this flannel shirt.

Q. Did you describe his shirt to them before they opened the vest?

A. I don't know; I said unbutton the vest so I could see the shirt, and I said, "That is the shirt Oscar Colter left at my house."

Q. Was the body badly corrupted when you found it?

A. His clothing were all there, nothing of his head but the skull and bones.

Q. The shoes were a pair of lace shoes?

36 A. Yes, sir; with pieces sewed in around the sides, this way, and at the top, laced. They were fastened with hooks, by putting a string around the hooks.

Q. They were on his feet, were they?

A. Yes, sir.

Cross-examination:

Col. WOLFENBERGER. When was the first time you had knowledge that your brother was gone?

A. Sunday evening.

Q. Who told you?

A. Ramsey came to my house late Sunday evening and told me.

Col. CLAYTON. Was there any arms, weapons, or pistols of any kind found around your brother?

A. No, sir; none that I seen.

Q. Did you learn that there were any?

A. There was nothing found.

Mr. WOLFENBERGER. I object to the witness stating what he learned.

WITNESS. There was nothing found but that knife.

Col. CRAVENS. Are you certain about that?

A. Yes, sir; nothing but that pocket-knife.

(Recess, 10 minutes.)

Mr. WOLFENBERGER. Do you know your brother's handwriting when you see it?

A. As a general thing, when I notice it close, I do.

Q. How did he sign his name?

A. S. M. Morgan.

Q. Write a legible hand?

A. Plain hand; yes, sir.

Q. Spelled well?

A. Yes, sir.

Q. When did you first find out that your brother was killed?

A. The 24th day of December.

Q. Who gave you the word?

A. Jim Lowry came down and told me they found a man in the

37 hole and they thought it was my brother, and I went up there and saw that it was.

Q. Who was up there when you got there?

A. A good big crowd.

Q. Was the body out of the hole when you got there?

A. Yes, sir.

Q. Had the body been searched before you got there?

A. His coat pockets had; his pants and vest pockets I don't think had.

Q. How do you know that?

A. Because I saw them take out of his pants pockets the knives and keys and the vest pockets the most of these letters.

Q. Your knowledge of it is you saw the pockets searched after you got there?

A. I saw the pants pocket and the inside vest pocket after I got there.

Q. And somebody had been there and taken the body out before you got there?

A. Yes, sir.

Q. How do you know his pockets had not been searched?

A. Because his vest had never been unbuttoned. I asked them to unbutton it and let me see his shirt.

Q. How do you know?

A. It showed it hadn't been unbuttoned.

Q. How do you know?

A. Well, it showed it hadn't.

Q. How did it show that?

A. The dirt was still around the buttons, and it had a different appearance when they buttoned it back on him.

Q. What kind of buttons was on the shirt?

A. I don't know.

Q. What kind of dirt was on the shirt?

A. It was sand.

Q. What kind of buttons was on the vest; you say you noticed the buttons on his vest?

A. I noticed them as having some dirt around them; it hadn't been unbuttoned.

38 Q. What kind of buttons were on the vest?

A. I don't know exactly, but something to suit his clothes; they generally put on buttons to suit the clothes.

Q. How do you know that?

A. I know it, for I have bought enough to know it.

Q. What kind of dirt was around the buttons?

A. It's sandy there, right on the bank of the river.

Q. You examined it carefully, and think it hadn't been unbuttoned when you got there?

A. I just walked there and asked them to unbutton it.

Q. You are not sure it hadn't been unbuttoned?

A. I will say it yet.

Q. How do you know that?

A. I know it from its looks.

Q. Were they yellow buttons?

A. His clothes were a grey mixed suit and the buttons nigh the color of the clothes.

Q. Grey buttons then?

A. I don't know.

Q. Were they metal or cloth buttons?

A. Something like that [pointing to button on juror's vest]. The buttons were something to suit the clothing.

Q. That is the best explanation you can give of it. When did you say you saw the defendant last; with your brother on the same morning?

A. Between 10 and 11 o'clock, to the best of my knowledge.

Q. Which way were they traveling?

A. In the direction where my brother was found.

Q. [Showing map.] On what road were they traveling?
A. On this road, if that is the main road.
Q. Whereabouts?
A. This ain't laid off right; it ought to go up there and make a short bend. They were going that way.
39 Q. Is that the direction of the body?
A. This would have been the main road. I seen them about there.
Q. They hadn't passed that road there?
A. No, sir.

Col. CLAYTON. You had better prove the map before you introduce it. This witness says your map is not correct—well, go ahead.

Mr. WOLFENBERGER. When did you say you got the information that Morgan was dead?
A. That evening; Sunday evening, after dark.
Q. The next day you went to Muskogee?
A. I had an attachment taken out and had everything he had in his possession attached.
Q. What for?
A. I had his note for $100.00, and he had left and it was due any time, and he left without making any arrangements and I thought I would make myself safe, and I would have what he had attached.
Q. That is the suit you had against your brother to save your debt. Did you make any inquiries to find out whether he was gone or not?
A. I asked everybody around.
Q. Who?
A. Different ones; I asked Frank Smith and some others there.
Q. Who did you ask before you started up there?
A. I went to Grider's and asked him and he told me the same as Ramsey did, that he was gone. I went to Kit Harris' and Kit told me he was gone. They was the ones told me that morning.
Q. Where was he boarding at that time?
A. I don't really know; I think, though, at Mr. Hoyt's.
Q. I am talking about your brother.
A. He was staying at Mrs. Harris'.
Q. How long had he been boarding there?
A. About a week.
40 Q. Where before that?
A. Up to the 15th of November, he had been staying at my house.
Q. What made him leave your house?
A. We had some little difficulty.
Q. The reason you attached the property is, you were mad at him?
A. He owed me, and I thought he was gone.
Q. When was the debt due?
A. Any time, on or before the 1st of December.
Q. Have you got that note with you?
A. No, sir; he said he would pay it just as fast as he got his cotton up.
Q. Did you ever have any conversation with William Baker, about where your brother was?
A. I don't know anything about Baker.

Q. It is Parker, then?

A. I know Parker, but if I had any conversation with Parker——

Q. Did you not go on and say where he was. He asked you where he was, and you supposed he had gone to steal a couple of horses?

A. I didn't say no such thing. I might have said to Parker, since you remember me of Parker's name, I met him in Tahlequah, and he was asking about him, and I said I supposed he had gone to the Pawnee Agency to herd ponies.

Q. Do you know those letters you spoke of were found on his body?

A. I seen most of them taken off.

Q. How many of them?

A. I don't know; there was 3 or 4 of them, I will say, taken out of his inside vest pocket, with that receipt with them, too.

Q. Did you read them?

A. No, sir; Edmiston read them, and I listened to them?

41 Q. How do you know these are the same letters, if you didn't read them?

A. I looked at them. They are the same description and all.

Q. How came you to give a description from his reading?

A. I heard him read them.

Q. What was in the letters?

A. About what Col. Clayton said.

Q. You don't know a word in the letters, do you?

A. I don't remember what all was in the letters.

Q. You don't recollect anything?

A. I recollect some things, I don't remember all that was in them, though. There was some blotched, and Edmiston could not read them.

Q. You didn't read them yourself?

A. No, sir.

Q. You couldn't swear, then, these are the same letters?

A. Yes, I could; I swore they are the same letters.

Q. Where have those letters been kept all the time?

A. I had the letters in my hands up there.

Q. When was the last time you saw the letters, until you saw them today?

A. When we were here before the commissioner, in January sometime.

Q. Did you read the letters then?

A. No, sir.

Q. Were the letters read before the commissioner?

A. No, sir.

Q. And you swear these are the same letters. You say that you don't know anything about the receipt, but you heard of it?

A. He told me about paying a man $10.00, and he got his receipt for it.

Q. You said something about what was in the letter written from the Pawnee Agency. What was in that letter?

A. It started off something like this: Dated Pawnee Agency; "Mr. Bood Crumpton; My dear friend: As I have written you two let-

42 ters, and got no answer, I will write to you again. How are you getting along with my cotton crop? I reckon you got it all gathered by this time. Turn Bob over my horse, and tell him to take Ramsey's

name off the note. Pay Hoyt $40.00 I owe him and I will do what is right, as I can't get back before the 15th of December. How is the spotted horse getting along? And my girl getting along. Tell Grider, Lena Thompson wants him to come out there and get him a home. S. M. Morgan."

Q. You didn't notice the day of the week?

A. No, sir.

Q. You gave it back to him and never saw it any more?

A. No, sir.

Q. How come you to recollect it so well if you just casually saw it?

A. He said there was a word or two in it he couldn't make out.

Q. And you recollect everything in it but these words?

A. I made the words out myself, but I don't recollect what they were now.

Q. How large a piece of paper was it written on? As large as that?

A. Yes, sir; I think so.

Q. It was written over one side?

A. Yes, sir; I believe a little on the other side.

Q. You say that you just merely saw the letter?

A. I saw what was in it?

Q. Didn't you say you just casually read it?

A. I didn't say that. I say I didn't notice——

Q. Didn't you say you didn't read it carefully?

A. I said I didn't take any great work to—but I read it.

43 Q. Along about night you couldn't see every scratch and mark. You never seen the letter but once?

A. That is all.

Q. When was it Bood Crumpton came to you and told you about your brother being gone the first time?

A. I don't know exactly when that was, but up there one day, at Mrs. Vann's, he wanted me to pay him for picking some cotton, and he said Sam went off and left him in the soak, for he gave him all the money he had.

Q. Who was it brought the news in the neighborhood that your brother was gone?

A. Crumpton came back to Hoyt's, so Ramsey told me; he came to my house Sunday evening and said Crumpton was at Mr. Hoyt's.

Q. Did you go to see Crumpton to find out anything about it?

A. I didn't.

Q. Why?

A. I believed what Ramsey said about it, so I didn't go.

Q. Your brother was owing you for a horse, and a man came back and said he turned it over to you, provided he didn't come back, and you didn't seek that information to find out whether it was true or not, but commenced to sue out an attachment?

A. Some of that I didn't hear. You will have to go over it again.

Q. You say you got information of that from Crumpton, on Sunday evening, and on Monday morning you went to town without going to Crumpton, and sued out an attachment, and take your brother's property and sold it?

A. No, sir.

Q. Haven't you sold it yet?

A. No, sir; I never sold it.

Q. What did you do with it?

A. One horse belonged to me and the other one belonged to Mr. Colquet, and he got his horse back. We went to lawyers and told them that evening he was dead, and withdrew the suit, and each one of us paid the costs.

44 Q. You didn't seek any information to find out whether your brother was gone or not?

A. I didn't go to Crumpton and ask him about it; Ramsey told me what he said.

Q. Why didn't you go to the man who proposed to know all about it?

A. Because I didn't believe anything he said about it, only my brother was gone; that is all.

Q. You know your brother and you fell out about a debt?

A. I sold my brother a horse.

Q. He gave you a note for it, made it secure; you knew the man on the note was good; you knew you couldn't be beat out of the money, and so soon as you heard your brother was gone you then go and take out an attachment to take the last horse your brother had and sell it?

A. Mr. Ramsey was on the note, and he said, it seems he is gone, and I don't want to loose that. Says he, "You can go with me in the morning and take out an attachment so you can hold the stock."

Q. You didn't believe anything Crumpton said about it?

A. Only that he was gone.

Q. You didn't put that in before?

Col. CLAYTON. You are citing him incorrectly.

Mr. WOLFENBERGER. You say you didn't seek information to find out where your brother was? You and your brother had a difficulty about a week before that, and you run your brother off from your house?

A. I didn't run him off; he left on his own accord.

Q. Didn't you threaten to get a pistol?

A. No, sir.

Q. Did you get one?

A. I had one when we were talking, and I left there to get a writ.

45 Q. A serious difficulty?

A. Not the one we had; it all settled before we got to my house; he gave me his note, and security on it. I wanted the money, and Ramsey didn't want to loose it, as he had gone and left, and that is the reason we did it.

Q. When were you and Mr. Burris together last?

A. Just before this killing. He came to my house a week or two before that with my brother and got some corn; he never got out of the wagon. I just spoke to him; that was all. My brother had been to the fair, and he came to my house to get a horse to meet him. That was before the difficulty. We were all on good terms at that time.

Q. Do you know where he was about that time; Sam Burt or Will Burt?

A. I don't know where Burt——

Q. Was you speaking of Burt?

A. Yes, sir. I didn't understand you; I thought you said the defendant.

Q. What time did Burt come to your house?

A. Just before this killing; on Friday evening before it was done on Sunday. He staid at my house Friday night, and went to Colquet's Saturday morning, and went down to Harris' then to see my brother, and he wasn't there and he came back to my house and stayed there; I was with him until late in the evening. My brother came to my house and asked me where Will was, and I told him at Colquet's, and he went out there late that evening, and I went and carried him to his cotton patch.

Q. How do you know?

A. He said it was. If he didn't go to Colquet's, then I don't know where he went.

Q. He came to your house on Friday, and you and him and your brother came up there with him?

A. No, sir.

46 Q. How was that?

A. Burt came to my house Friday evening, late Friday evening, and staid there Friday night, and on Saturday morning I went with him to Colquet's, that's his cousin; then I went back home and brother came to my house for him, and I told him he was at Colquet's, and he went there and didn't find him, so he came back to my house and eat his dinner and goes off to Sam's cotton patch and lay around there and comes back in the bottom where me and Colquet was sawing wood, then we went to Colquet's and sawed some wood.

Q. Did you say anything about that before?

A. Well, it was a different thing as to where the man Burt was. Late Saturday evening we were at Colquet's sawing wood, and I went home and left Burt at Colquet's house; and directly I got home Sam, my brother, rode up into the yard; I spoke to him and he asked me where Burt was. He said Burt was for hunting him, and he thought he would hunt him. Well, I told him he was at Colquet's. He said he would go and see him, and Will Burt says—well, he went off up there.

Q. Then they were together Saturday evening?

A. I don't know.

Q. He was hunting for him?

A. Yes, sir.

(Adjourned until to-morrow, May 28th, 1890, at 8.30 a. m.)

Mr. WOLFENBERGER. I was asking you about where you were on Sunday, the time deceased was missing.

A. At home until about 10 o'clock, then I went to Colquet's; I think about 10 when I left home. My wife went with me.

Q. How long did you stay there?

A. Until late in the evening.

Q. Where did you go then?

A. Home.

Q. Who was with you on that day?

47 A. When I got up there Colquet and his wife was there; and Will Burt was there also.

Q. How long did Burt stay there?

A. I suppose all day; him and Colquet.

Q. You were there all day?

A. All but an hour or two. I went to Mrs. Vann's about 11 o'clock, and staid there about an hour and then I came back to Colquet's, and Burt and Colquet and Mr. Williams was there.

Q. What time did Burt leave there?

A. If he left at all that day I do not know it.

Q. What time did you see him there last?

A. Late in the evening.

Q. About the account of $15.00. You said there was a mistake about that?

A. Yes, sir; the commissioner must have made a mistake. He asked me if I ever paid the defendant any money, and I told him I paid him $3.50; that he claimed $8.00 for picking cotton. He picked some cotton before my brother went off and I thought it was about $5.00, and my brother told me he had paid for all the picking before the fair, and he claimed for $3.50 since the fair, and I paid that.

Q. Your brother told you that all the cotton to that time he paid him up?

A. Yes, sir.

Q. When did he tell you that?

A. Just before he came to Fort Smith here to the fair.

Q. When was it you and him had the little difficulty there?

A. That was before the fair at Muskogee, and after the fair here at Fort Smith.

Q. Had you had a difficulty with him before?

A. No, sir.

48 Q. How long before that he told you that he paid all the picking before the fair, until he presented this order?

A. He never presented an order. He just said he picked 450 pounds, I believe it was $3.50 worth, after the fair. He told me that on Tuesday after my brother left, when I went after the horse.

Q. What horse did you get?

A. The grey horse there at Hoyt's.

Q. What other horse was that you attached?

A. The spotted horse.

Q. How long before that had your brother told you he paid him up all the picking?

A. A couple of weeks. That is my knowledge.

Q. Had you and your brother had any difficulty up to that time?

A. No, sir.

Q. You say you and your brother did have some trouble?

A. Yes, sir.

Q. Where was that?

A. At John Lowry's.

Q. Where was your brother at that time?

A. He was there at John Lowry's.

Q. How far do you live from John Lowry?

A. About three miles.

Q. What was the difficulty about?

A. They had come to Fort Smith to the fair. My brother came to Fort Smith, and the defendant there said he would go to the river Saturday evening and meet him. Brother rode off the grey horse and he got on the spotted horse and met him at the river and the defendant came down the next morning to meet him and they got on a spree and they
49 never came back until Sunday night. Next morning I went off and while I was gone they came home; they were a ripping and running the horses pretty smartly, my wife said. I am satisfied they were, from their looks. I learned they were fixing to go to a dance about 10 miles from there. I said I would go down there and get that horse that night. I expected I would find him there. I struck out and caught them at Lowry's.

Q. What business had you to go down there to see him?

A. I went to get that horse.

Q. What for?

A. It wasn't a sale; he had bought the horse from me and hadn't paid for it; and if he didn't pay for it he was to take good care of it.

Q. You sold your brother a horse and because he was riding it around the country you concluded to go and take it away from him?

A. He wasn't taking care of it.

Q. Was he ordinarily bright?

A. I guess he had very good sense.

Q. Do you know whether he was ever in the insane asylum or not?

A. He went there in the winter of 1883, in January. He was put in there in 1885 again; no, in 1884.

Q. Do you know when he was discharged?

A. In April, 1885.

Q. How long was it until he came to this country then?

A. He stayed at home then about 2 weeks, and then he came west. He never said anything to me about being in the asylum. I don't know he said it, but there were people up there in the nation he knew had been there.

50 Didn't you tell it?

A. No, sir.

Q. Didn't you tell a man by the name of Wood, and you went to Kit Morgan, and told them not to say anything about it?

Col. CLAYTON. I object to that.

Mr. WOLFENBERGER. I want to show this boy wasn't at himself; that his brother was insane. He knew he had sold him a horse, and he had been following the man around the country——

The COURT. You have already proved he was insane at one time; already proved he took the horse back. What is the purpose in asking this?

Col. CLAYTON. He don't deny the fact of his insanity.

Mr. WOLFENBERGER. You went on down there; did you carry a pistol?

A. I had a pistol with me.

Q. What did you take it for?

A. When I left home I didn't expect to get back until in the night some time, and when I am out after night I generally carry a pistol.

Q. At that time there was a good deal of whiskey in the country?

A. Yes, sir.

Q. Who had whiskey in there?

A. I don't know.

Q. Did you ever see any at all?

A. I saw a good many men drinking.

Q. Who were they?

A. There was Black Hoyt and Frank Colbert and Mr. Ramsey and Mr. Colquet and Charley Vann; I believe that is all I seen that day that was drinking, and my brother and this fellow, they were drinking, too.

Q. That was on Sunday?

A. No, sir; that was Monday evening.

51 Q. Were you drinking on that day?

A. No, sir.

Q. Was your brother drinking when you went and got the horse?

A. Yes, sir.

Q. When you went down there and tried to take the horse away?

A. I didn't particularly try; we were talking, we were quarreling; no oaths, swearing. I told them I would take it, and he told me if I would let him keep the horse he would give Lowry for security. I told him I didn't want Lowry. If he would promise to bring the horse the next morning he might keep it.

Q. Didn't Lowry keep you and your brother from having a serious difficulty?

A. He might have said not to have a fuss, and I don't remember that he said that.

Q. You had a pistol?

A. Yes, sir.

Q. Did your brother have a pistol?

A. I don't know; he always carried a pistol.

Q. You went after the horse?

A. Yes, sir.

Q. And just because he was riding him around to parties you went down to get him?

A. Because I didn't think he was treating him right.

Q. When was he to pay that money?

A. Any time; and he was squandering the money.

Q. How do you know?

A. I saw him get money and squander it. He carried $20.00 to Fort Smith.

Q. Your brother owed about $100?

A. He owed me about $60. Him and I gave our note to Hoyt for $60.00. The $60 was done due.

52 Q. That wasn't owing to you?

A. Yes, sir.

Q. How come you to give your note to Hoyt?

A. Hoyt owed me $60.00 and we got the horse from Hoyt, and I left the $60.00 go in towards the horse, and then we gave our note for $40.00. We were to give $95.00 for the horse, and brother owed him $6.00.

Q. You knew your brother had been in the insane asylum and you sold him the horse, and because he was riding that horse around in the country, where he had a right to ride him, you took it into your head——

A. I didn't think he was treating it right.

Q. You were secured for the horse?
A. No, sir.
Q. You believed he would pay it?
A. Yes, sir.
Q. You had no more right to take that horse——
A. He told me if he didn't take good care of the horse he would let me have him back.
Q. And because he told you that you thought you had a right to take him?
A. I did.
Q. When you left home you went down after that horse with a pistol? You went down for an affray?
A. I didn't expect to see him; I just expected to go up and get it.
Q. You were going to steal him?
A. No, sir; there was somebody going down with me.
Q. Who went with you?
A. Nobody didn't go; Jerry Ferry said he would go.
Q. Where was he?
A. Down to the river.
Q. You didn't see him?
A. Yes, I went down to his house that evening just before I saw my brother.
Q. How far below Lowry's did he live?
53 A. I suppose a mile. I went down there to find where the dance was, and he told me where it was and said he would go down with me and show me the way.
Q. How far did Lowry live below your house?
A. About 3 miles.
Q. You had to go right by Lowry's?
A. No, not exactly.
Q. How far?
A. Just a short distance.
Q. 200 yards?
A. I suppose; yes, sir; I went to Lowry's.
Q. Did you stop at Lowry's?
A. Yes, sir.
Q. Was he there at the time?
A. I don't remember.
Q. Did you know the horse was at Lowry's?
A. They were not there.
Q. Was your brother there?
A. Yes, sir.
Q. Did you make any inquiry about the horse at that time?
A. I asked him where the boys was and they said they didn't know; they said they left that morning, and I st/a'ted back home.
Q. When you got to Lowry's you found him and your brother there?
A. Yes, sir.
Q. What did you say to your brother when you found the horse?
A. I don't remember; I told him, I believe, he was playing wild.
Q. He was drunk?
A. Well, he wasn't to say drunk; he was drinking.

Q. How long did you have a talk with him?

A. I expect we stood there some 15 or 20 minutes.

Q. Didn't you try to take the horse away from him?

A. No.

54 Q. Did you take the saddle?

A. The saddle was setting on the fence, and I told him I would take the saddle, and he said all right; I picked it up and put it before me; I didn't want the one I was riding on, and I carried it before me. The one on the fence was my saddle.

Q. When you went to take the horse they told you you couldn't take him?

A. He said I couldn't take the horse; then he told me if I would let him keep him he would bring him up the next morning; so I went back home, satisfied he would bring him up the next morning.

Q. You say on Sunday evening you heard that your brother had left the country?

A. Yes, sir.

Q. Where were you at the time you heard it?

A. At home.

Q. What time of day was that?

A. I suppose 7 or 8 o'clock.

Col. CLAYTON. Mr. Wolfenberger has not asked a question this morning that he did not ask yesterday evening.

Mr. WOLFENBERGER. I want to know whether I got his statement right or not.

The COURT. It has an injurious effect.

Mr. WOLFENBERGER. He says he was there at 7 o'clock?

The WITNESS. I didn't say exactly at 7 o'clock; I suppose sometime between 7 and 8.

Q. Was it sundown?

A. It was after dark.

Q. Who told you about it?

A. Ramsey.

Q. Didn't you say yesterday that you heard it at your cousin's

55 on Sunday evening, and you said you heard it from several parties, and you told me who the parties were?

A. I didn't tell you I heard it at my cousins; I said I heard it at home.

Q. Who told you?

A. Ramsey came to my house and told me, and a fellow by the name of Anderson came with him.

Q. Didn't you say yesterday several parties told you, and also you named Mrs. Harris?

A. I seen them next morning, Monday morning.

Q. I want to ask you another question. What did you do with the body when you found it?

A. I had it buried that evening?

Q. Was it after dark when you buried it?

A. Yes, sir.

Q. Why did you bury that body after dark?

A. I was advised by Mr. Edmiston to have it put away as quick as possible. I wanted to have it buried at Muskogee; they told me to go to Muskogee, and when I got back that evening they didn't have it buried, and they brought it on and buried it. They said in the shape it was it would be advisable to bury it as quick as possible.

Q. Why did you not let the neighbors come in here and inspect the clothing on the body?

A. There was plenty there said they could identify them, and I was advised by these men and all the men there to put it away that evening. I had to go to Muskogee; there was a committee appointed.

Q. What did you go to Muskogee for?

A. Mr. Edmiston said we would go to Muskogee and get out a warrant for the defendant's arrest.

Q. Did you go to Muskogee?

A. Yes, sir; I went, and they had the papers fixed up and I signed them.

56 Q. What did Edmiston have to do with it?

A. He was there when the body was found, and was taking a part in it.

Q. Did you get the warrant out before you made an investigation as to who did the killing?

A. Edmiston advised me to go up there and take a warrant out. There was other men besides Edmiston said they knew who it was.

Q. Instead of taking your brother home, or waiting until the body was covered up, you went to Muskogee to get a warrant out for a man that you didn't know whether he done it or not?

Col. CLAYTON. He says he did know.

Mr. WOLFENBERGER. He never made any investigation up to that time.

The WITNESS. I think you are a little off on that.

Mr. WOLFENBERGER. You went to Muskogee, and turned the body over to strangers and let strangers go and bury the man in the night time?

A. I didn't turn him over to strangers; there was my cousin there to take care of him.

Q. Why didn't you sent your cousin after the warrant?

A. They said I would have to go?

Q. Did you make an affidavit?

A. I don't know about that.

Q. I say you do know—one way or the other; now answer it.

The COURT. What is the object of that fact?

Mr. WOLFENBERGER. I want to show he is the only man had any motive in killing his brother.

57 The COURT. Does the fact that he made an affidavit show that?

Col. CLAYTON. They have named the man they said done the killing. They said it was a black-whiskered whiskey peddler, and when Mr. Wolfenberger turns around and says it is his brother, he does not stand in an attitude of telling exactly what is—Mr. Cravens or Mr. Wolfenberger is deceiving somebody.

Mr. CRAVENS (who made opening statement to the jury, and asserted that they would prove that a black-whiskered whiskey-peddler done the killing). Mr. Wolfenberger is not responsible for me.

The COURT. I don't think that the fact that he made an affidavit tends to prove that fact.

Mr. WOLFENBERGER. You stated you don't know whether you made an affidavit or not. What time was it you got back in the evening your brother was buried?

A. It was about dark when I left town; it was about 8 or 9 miles. I rode from town in a walk; you can judge.

Q. About what time in the night was it when your brother was buried?

A. I reckon it was about 8 o'clock.

Q. Was he buried when you got back?

A. No, sir; they hadn't got there with him; they had gone after him, and I went to where they dug the grave to see if they had got him buried.

Q. Did you take him in your house?

A. No, sir.

Q. You just put him away like he was a brute?

A. The people there all advised me to do that, and that is what I done.

58 Q. I believe you said yesterday that you went on Monday morning and taken out an attachment?

A. After I heard of the killing?

Q. After you heard your brother was missing?

A. Well, that is another question.

Q. You went and taken out an attachment. What did you do with the cotton crop?

A. I gathered it and sold it and paid back his debts around.

Q. Who did you pay?

A. I paid Mr. Grider $7.50. When I paid for the picking there was about $12.00 left.

Q. How many bales did you pick?

A. There was 4 or 5, I believe.

Q. What year was that in?

A. In 1889.

Q. Cotton was sold at 8½ and 9 cents per pound?

A. I got 2½ cents per pound for it.

Q. That would be about $43.00 a bale.

A. Well, I suppose so, averaging to make a bale of cotton weigh 500 pounds, and 4 or 5 bales. I had the receipts at home, and I didn't think they concerned the case or I could have brought them along.

Q. That would make $172.00?

A. Hoyt got the half of it, and he had already drawed $20 on it from Mr. Hoyt. Hoyt loaned him $20 on my brother's half of it and I paid that.

Q. He got half of it at the start, then you paid him $20 more. What did you do with the balance?

A. When I paid for the picking there was about $12 or $13 left. I had to pay $1 a hundred; I paid from 6 bits to 85 cents and $1 a hundred, and I paid 75 cents for lots of it.

Q. What did you do with the balance?

A. I kept it.

59 Q. You paid Grider $7.

A. Yes, sir; and I paid Hoyt $2.

Q. How much was the balance?

A. I think, after paying Grider and Hoyt, there was some $5 or $6 left; then I paid Oscar Colter $20 that he owed.

Q. What did you do with the balance?

A. There wasn't any balance left; it taken more than he had left to pay his debts.

Q. You kept $5?

A. There was $5 after I paid Hoyt and Grider or 6. I paid $1 a load for hauling it; I think there was 5 loads, maybe more.

Q. You had $172. Hoyt got the half of it, then you paid $20 out of that; that left you $150 to pay to the balance of his creditors?

A. You have not got it right.

Col. CLAYTON. It is $86?

Mr. WOLFENBERGER. That left you $86 to account for?

A. I paid Will Burt $40.

Q. You paid Oscar Colter $20.

A. My brother sold him a horse and he had paid $20 on the horse, and my brother got the horse back for $10 less than he sold it for, and that left $20 my brother was owing Colter; then there was $51.60 for picking; then $5 of that for hauling it off.

Q. Then you paid Grider $7?

A. Yes, sir; for money Grider said my brother borrowed from him, and I paid Hoyt $2 he said he had loaned my brother. I believe I paid no other debts, only the watch; my brother bought that watch and hadn't paid for it, and I kept the watch and paid for it out of my own money.

Q. You wouldn't pay money out of your own pocket to pay your brother's debts?

A. I did do it after I found he was dead.

Q. You would not have taken the money out of your own pocket if you knew he had been living?

A. I would not.

60 Q. In your testimony before the commissioner did you not state that you read the letter and you thought it was in your brother's handwriting at that time?

A. When I first read the letter I didn't examine it close; it was in plain handwriting. I noticed it was bad spelled.

Q. When did you learn it was not his handwriting?

A. When I found he was dead. Kit Harris wrote a letter to my brother and sent it in the care of Lena Thompson, and that letter came back to him. That still satisfied me that he wasn't there.

Q. Didn't you say it was in your brother's handwriting?

A. I said it looked like his handwriting, because I believed he was gone; I believed he was living. If I had any idea he was dead I would have noticed it close.

Q. How is it you remember so minutely everything stated in that letter if you did not look at it carefully?

A. I just read it over once. When I hear anything of that kind why I generally—I have got a good recollection.

Q. Did anybody read this testimony to you what you swore before?

A. Mr. Clayton read yesterday morning, and I remember it was just like I said it only about that $15. There is a mistake there.

Q. Have you not been trying to memorize what is stated in this paper so as to come in here and make the same statement you made before the commissioner?

A. Of course I want to make the same statement.

Q. You said before the commissioner you thought it was in your brother's handwriting?

Col. CLAYTON. You are not quoting him right. My recoilec-
61 tion is he stated it was not his brother's handwriting, but on the cross-examination he said that heretofore—he thought he had heretofore said he thought it was his brother's handwriting.

Mr. WOLFENBERGER. How did you make up your mind it wasn't your brother's handwriting?

A. When I found he was dead; I knew from his looks he had been there since that day he disappeared, and know he couldn't have written it at the time.

Redirect:

Col. CLAYTON. When you took out the attachment you had learned your brother had left and you had learned that all the property was turned over to this man here?

A. Yes, sir.

Q. And it was to protect it and your debt that you took out the attachment?

A. Yes, sir.

Q. Where was that letter directed to after his disappearance?

A. To Red Fork, in care of Lena Thompson.

Q. That letter was never received there but returned?

A. Yes, sir; understand, this letter did not come back until my brother was found dead.

Q. (Reading from commissioner's papers). "I didn't think the letter was in my brother's handwriting." That is in his examination-in-chief, and in his cross-examination he says, "I did say at the time it was in my brother's handwriting."

Mr. WOLFENBERGER. I want to get the witness to identify this hat. Do you know this to be your brother's hat?

A. It is one just like he was wearing when he went off.

Q. How long had the hat he was wearing been worn?

A. Not over 2 weeks, I don't think. Mr. Grider first bought the hat and swapped it to my brother.

62 Q. Take this hat and look at it, and see if you know whether a man wears a hat the sweat cloth at the back of the head? The back part looks new.

A. But you put a hat in a hole and let it rain on it for 7 weeks and it does not look natural. Maybe some parts would be more protected than others.

Q. In wearing a hat isn't it perfectly natural that the sweat cloth that goes over his forehead turns it black?

A. That was never black by sweat at all.

Q. How do you know?

A. Because the weather was cool at that time.

Q. You think the sweat cloth was blackened by exposure to the wea'her?

A. Yes, sir.

Q. What kind of weather was it?

A. It rained a good deal, and the hat was lying where it would be exposed, and the rain could fall in that hole. It was taken out before I got there, but they said it was taken out of that hole.

MILTON M. EDMISTON.

Col. CLAYTON. Where do you reside?

A. At Muskogee, Indian Territory.

Q. Did you know S. M. Morgan in his lifetime?

A. No, sir.

Q. You know Robert Morgan here?

A. Yes, sir.

Q. I believe you are a lawyer?

A. Yes, sir.

Q. Were you present at the time the body was found supposed to be S. M. Morgan's?

A. I was present; it had been taken out of an opening—a cavity in the ground.

Q. When did you get there?

A. I think just about noon.

Q. Of what day?

A. It was Christmas eve, I think. I went to some kind of an
63 entertainment that night, I think it was a Christmas tree.

Q. I will ask you if you made an examination of the body, state what it was?

A. I examined the pockets and took some articles out of the pockets, and we made something of an examination of the condition of the body; we found the body was considerably swollen—the limbs had swollen until the pants and clothing were very tight. The front part of the face was gone—had disappeared from about the center of the forehead, the bone and all. I believe there was about one-half of a jaw here remaining intact. The other portion of the jawbone had disappeared. There was no bone of the nose or the center portion of the face remaining at all, just like you cut out a gourd for a dipper, a hollow empty skull.

Q. The back part of it being the bowl?

A. Yes, sir.

Q. Did you notice the forehead?

A. Well, the break was across in this way and just about the center of the forehead. The examination disclosed the hole apparently about the center of the forehead, that is a portion of a hole. The break appeared to be in the center of a hole, I presume to be about the size of a pistol bullet. The break was in the center of the hole where the face had been removed and the bone leaving the print of something apparently the size of a bullet.

Q. What shape?

A. It didn't penetrate direct—it apparently had a downward course.

Q. You spoke of a hole about the size of a bullet; do you mean the size of a bullet hole, and if the other half had been there you would have found it about the size of a bullet?

A. Here is the break across here and just above that was the ap-
64 pearance of half a circle, and that had a downward tendency rather than an inward tendency.

Q. State if the clothing were on the body?

A. Yes, sir; except the hat; I believe that was lying beside of his head.

Q. (Showing hat.) Examine that.

A. Yes, sir; I think that is his hat. I left the articles with the commissioner.

Q. You kept the hat until it came to the officer?

A. Yes, sir; until I left it with the commissioner.

Q. Did it have a bullet hole in it when you found it?

A. Yes, sir.

Q. Did you examine it as to its course?

A. Yes, sir; at the time. The bullet is located in this as it was in the one I gave the commissioner; I noticed that in reference to this band there it is usually worn on the left side of the head.

Q. What else did you find, if anything?

A. There was a silver watch and chain.

Q. See if that is the watch and chain?

A. Well, I am not able to speak so positively in reference to the watch and chain; the brother has been wearing it since; I gave it to the brother.

Q. Did you find anything else?

A. We found a pocket knife and a knife handle that had no blades.

Q. Where did you find that?

A. I think the knives were in his right pants pocket; I took my knife and cut the pockets open. Those are the knives. We found one or two keys.

Q. Look at that key.

A. I think there was another key. This looks like it. I know it was for one of these little round padlocks. Then we found some papers in his left vest pocket, some receipts, and a little book in his left coat breast pocket. I don't know whether it was in-side or out. I found a little day-book, memoranda book. It was so saturated with blood, sort of
65 clotted and matted together. W took sticks and opened it, and it was so offensive, it was injured so much, we did not preserve, and the necktie and all this side of the body was apparently clotted, and blood on the articles in his coat pocket.

Q. That was on his left side?

A. Yes, sir. I think those are the papers. I see they are marked by the commissioner. If these are the papers I presented to the commissioner they are the papers I took from the body.

Q. Look at the envelopes and state independently of the fact as to whether they are the ones you handed to the commissioner?

A. They are the ones I handed to the commissioner.

Q. And they are the ones you found?

A. Yes, sir.

Q. Did you preserve anything else?

A. There was a portion of a mustache.

Q. Just one side (handing mustache)?

A. Yes, sir; that is the mustache.

Q. You brought these things here yourself?

A. Yes, sir. I think there was a looking glass; a round one.

Q. What was done with that?

A. I left all of them with the commissioner.

Q. Do you remember the kind of clothing he had?

A. I think it was a sort of checked goods; I don't know whether the entire suit was that or not; I believe it was.

Q. How many persons did you find there when you got there?

A. I think 20 to 30; they kept coming all the while; there was as many as 20 to 30 when we left.

Q. Describe the hole.

A. It was shaped like a cotton basket. It was very sandy soil, about as deep as a man's head, about 6 feet deep, and perhaps at the bot-
66 tom 2½ feet across, and then it came up pretty near straight for about 4 feet, then I suppose at the top 4 feet across. I know it was just the depth of Mr. Williams and he is about 6 feet.

Q. Was the hole dry; any mud?

A. It was sandy; there was no water in it.

Q. Do you remember whether he had on boots or shoes?

A. I remember seeing they were shoes, but I can't describe them. There was a hole leading under in the bottom of this; I don't know how far it went; quite a large hole, as big as a water bucket; a sort of an opening, like it might have been a ground-hog hole. In the bottom of this hole and one of the limbs the lower portion of the clothing had been gnawed; I think it was the right leg exposed the stockings and drawers; the flesh had not been disturbed.

Q. What kind of weather was it?

A. That was a pretty day; a very pleasant day.

Q. That was the day before Christmas, you say?

A. That is my recollection; yes, sir.

Q. This pocket-book that you say was saturated with blood; I don't know whether or not you said where you found it.

A. It was in the left coat pocket; it was a little day-book; it opened at the end.

Q. Did you say that the left side of the clothing and the pants pocket was saturated with blood?

A. Yes, sir.

Q. Those letters you found there; to whom were they addressed?

A. To S. M. Morgan.

Q. The back part of his head, did you examine that to see if there was a bullet hole?

A. No, sir; we didn't turn the body over all the while I was
67 there, nor I didn't see anybody else examine it, either.

Q. How far was this hole from the river bank?

A. It was just a few feet from the edge of the bank; it was some little distance down to the water's edge.

Q. State how near to the road it was.

A. Well, it was a ¼ mile from where we drove with the team.

Q. Was there any road nearer than ¼ mile of this place?

A. I couldn't state; I was informed that was the nearest we could get there with a horse and buggy.

Q. What kind of a place was it in regard to its being timber?

A. On the south, just before we reached the spot where we found the body, there was a corn field, and just a short distance off timber; from the corn field all east and northeast was timber and quite a heavy underbrush and pretty heavy timber. There was a brush or bush fence immediately on the bank between the river and the corn field.

Q. State if the river had been up.

A. Yes, sir; it had the appearance of having been up.

Q. How high?

A. I don't remember now; it didn't get high enough to overflow; this bank was 20 feet high at that point, perhaps more; it was very steep; it was very difficult to get down the bank.

Q. Did you look around for indications for tracks?

A. Yes, sir.

Q. Did you discover anything?

A. We found no tracks; there was a place on this brush fence that looked as though something had dragged through the brush, but then it was all recent, evidently a little dried mud, as though made a day or two before. I examined with some other gentlemen very carefully for
68 tracks below. We found nothing, except the appearance that a horse had been there, but from the indication that had been done some time. There was a sand-bar running out from the steep bank. I expect the sand-bar to the water from the bank was as far as the length of this room. The water had recently been over that sand-bar. After we went over the sand-bar we went to the south of where the body was, and then examined along and went up pretty near opposite the body; by catching hold of limbs and twiggs we pulled ourselves up. We made a close examination there.

Q. You say you found horse tracks?

A. No, sir; it was manure.

Q. Where was that?

A. On this sand bar immediately below the body, that had the appearance of having been left there some considerable time.

Q. Was that at a place where the river had overflowed?

A. That was up from the water considerable; I think if the river was up several feet it would overflow it.

Q. If it had overflowed, it would have carried it off?

A. The river had not been over that; it had the appearance of having been rained upon, I judge from its position and shape.

Q. That was horse dung?

A. Yes, sir.

Q. You spoke of the appearances on the brush. That was of recent date, you say. Did you know that somebody had been there a day or two before that and found the body?

A. I heard that.

Q. And used some brush in lifting it up?

A. I had heard that. I heard some boys made the discovery a day or two before.

Q. You say here, in your examination before the commissioner, the body was about 200 yards from the edge of the cornfield?

A. It is something near 200 yards, and about ¼ mile from the body to this house where we left our team.

69 Q. This half of a mustache, you found lying there, you picked up and preserved?

A. Yes, sir.

Q. You couldn't see another portion of the mustache at that place?

A. No, sir.

Q. I understand part of the jawbone was still on?

A. Yes, sir; my recollection is it was the right side was still on, that was remaining.

Q. And the left side was gone?

A. Yes, sir.

Q. Did you find the left side portion of it?

A. No, sir; there was two or three pieces of bone we gathered up, but I think not the jawbone.

Cross-examination:

Col. CRAVENS. You think it was the left side that was there and the right side gone?

A. No; it is very uncertain with me which side.

Q. Your best impression is the left side was gone?

A. Yes; that is my impression now. I think what I have stated before the commissioner is evidently correct. I forget such matters as that. We found some little scraps of bone; you couldn't tell where they belonged.

Q. You did not know Sam Morgan?

A. No, sir.

Q. You are not able to say whether the articles you found there were his or not?

A. I am not able to state.

Q. You are not positively certain that is the watch was found there?

A. No, sir; the chain appears as the same.

Q. The body was removed from this hole before you saw it?

A. Yes, sir; just a few feet from the hole, lying on its back.

Q. Who took the letters?

A. I took them all myself. I cut the pocket here. I endeav-

70 oured to pull them out and I saw I would have to tear them, and I split the pocket and removed the letters. I think the letters were not all together; I think I found one letter in the pocket on this side.

Q. Were the letters in the same pocket that this decomposed memorandum book was in?

A. I don't think in that pocket, all the letters were not in that, I don't believe more than one in that.

Q. I think it was on the left side you indicated you cut the pocket?

A. Yes, sir; and I think I got the letter on the left side, but I am not positive; I think I got the letters out of two different pockets; I got one or 2 of them out of the right pocket.

Q. Do you know who was present when you took those letters?

A. I don't know; I could call many of their names. Mr. Williams was there, and Mr. Serges and Mr. Crawford, W. D., and Van, the shoemaker, and a number of others; Mr. Lowry and this brother came up after we had been there sometime, some one had gone for him.

Q. What time did you get there?
A. About noon.
Q. That was on the day before Christmas?
A. Yes, sir.
Q. Do you remember what day of the week it was?
A. I don't know; I believe it was Tuesday, though.
Q. Robert Morgan did not get there for sometime after you did?
A. No, sir; we did not take the articles from the body until——
Q. How long after you got there until he arrived?
A. I presume ½ hour.
Q. When did you first hear of the body being found?
A. I heard of it the day before.
Q. Then you heard of it the day after it was found?
A. I think it was found on Sunday?
Q. Do you remember what time of day you heard of it?
71 A. Monday afternoon, if it was Tuesday we were out there.
Q. What time in the afternoon?
A. I think about the middle; I didn't hear of it on the day it was discovered, from the information I got.
Q. And the next day you got there about noon, after you heard of it?
A. Yes, sir.
Q. And after you got there ½ hour or such a matter the witness, Robert Morgan, there came up?
A. Yes, sir.
Q. The body was in such a state of decomposition and so far destroyed that it would be impossible to identify the body?
A. Yes, sir; I think so.
Q. I understand you to say that half of the forehead was gone. You mean the lower half?
A. Yes, sir; and the upper half was there; the whole lower half of the forehead and all the face except a portion of the jaw was gone.
Q. Was the hair removed from the skull?
A. I think not a great deal; I think there was some perhaps near the edges of the skull.
Q. In the lower part of the skull remaining there you saw what appeared to be the size of half a bullet hole?
A. Yes, sir.
Q. Was it a smooth-cut hole or ragged edged?
A. Well, I don't know whether it was very smooth or not, it was just a little rough.
Q. Did you ever see a bullet hole in bone?
A. Yes, sir.
Q. You are not a surgeon?
A. No, sir; I only refer to this bullet hole in describing the size of it.
Q. What size of a bullet made it?
A. I think the calibre would be an ordinary sized pistol, such as they generally use; they call them 38's or 44's.
72 Q. You are not able to positively say that was a bullet hole?
A. No, sir.
Q. The portions of the forehead and face that were removed from the body you could not find?

A. No, sir; Mr. Williams went down in the hole.
Q. Did he make a search down there?
A. He did for a moment or two, but for some reason or other he didn't do it; that is what he went down for.
Q. That was after the body was taken out?
A. Yes, sir.
Col. CLAYTON. You say you can not say positively that was a bullet hole?
A. No, sir.
Q. Could you state positively that is a bullet hole? (Showing hat.)
A. No, sir; but to the best of my knowledge, I believe it is.
(Recess, 10 minutes.)

MATTIE HARRIS.

Col. CLAYTON. Where do you live?
A. 8 miles east from Muskogee, in the Cherokee Nation.
Q. Did you know S. M. Morgan in his lifetime?
A. Yes, sir.
Q. Do you remember the day that he disappeared?
A. Yes, sir.
Q. Where was he living?
A. At my house.
Q. How long had he been living there?
A. Just one week.
Q. How came he to be living with you?
A. He had made a crop with his brother and they had a slight falling out, and he came there to stay until he could gather his crop.
Q. What was he to pay you for board?
A. One dollar and a half a week.
Q. Before he left did he pay you any board?
A. No, sir.
73 Q. When was the last time you saw him?
A. The 3rd of November last.
Q. Do you know this defendant?
A. Yes, sir.
Q. What is his name?
A. Bood Crumpton.
Q. State if you saw him on the day that S. M. Morgan left.
A. Yes, sir; he was at my house; he came the evening before; Saturday evening.
Q. Did he stay all night at your house?
A. Yes, sir.
Q. In the morning, then, next day would be Sunday?
A. Yes, sir; the 3rd of November.
Q. What did they do after that, these two men, on Sunday morning?
A. They rode off from my house after they got breakfast.
Q. What horses did they leave on?
A. Sam Morgan's. One was a grey and the other was a spotted.
Q. Did either one of them state to you where they were going?
AA. Yes, sir; Sam Morgan said he was going to Davis'.

Q. Where did Davis live?
A. 7 or 8 miles above where I do.
Q. How far from Muskogee?
A. About 3 miles or 4.
Q. Was there some young ladies at Davis'?
A. Yes, sir.
Q. Describe the spotted horse.
A. It was a bay with white spots.
Q. And they left; which way did they go?
A. They went sorter north.
Q. Do you know where Mrs. Nicholson lived, and Grider and Harnage?
A. Yes, sir; they started in that direction.
Q. What time in the morning was that?
A. About 8 o'clock or 9.
Q. When did you next see S. M. Morgan?
A. I have not seen him since.

74 Q. That was the last you ever saw of him when he left in company with the defendant on Sunday morning upon the 3rd of November last?

A. Yes, sir; riding his own horse, and the defendant on his pony.
Q. When did you next see the defendant?
A. I saw him in a few days.
Q. Where?
A. At my house.
Q. Did you have any talk with him?
A. Yes, sir.
Q. What did he say to you?
A. I asked him where Morgan was and he said, "He got in a hack or carriage on the prairie and went off with a man."
Q. That was a few days afterwards?
A. Yes, sir.
Q. Anybody with him?
A. No, sir; he was afoot, I am certain.
Q. Did he say anything else about it?
A. I asked him was it a stranger, and he said, "Yes, unless he got acquainted with him over the river; he had been over to Bragg Station the Saturday before." He said Sam had been over the river the Saturday before.
Q. He told you that he had gone off with a stranger. Did he say where he had gone?
A. Yes, sir; to the Pawnee Agency.
Q. This Bragg Station was over the river?
A. Yes, sir.
Q. Did the defendant describe this stranger to you?
A. Not that day, but one time he did; he said he was a heavy set man with dark whiskers.
Q. Did he give his name?
A. No, sir.
Q. He said he was going to the Pawnee Agency; what for?
A. To herd some ponies.

Q. Do you remember the kind of hat Sam Morgan wore on the day he left your house?

A. Yes, sir; a black hat.

Q. (Showing hat.) Something like that?

A. It was a black hat something like that.

75 Q. Do you know whether Morgan had any money or not?

A. Yes, sir.

Q. How do you know?

A. He showed it to me on Saturday, in the evening.

Q. After the defendant came or before?

A. Before.

Q. How came you to see it?

A. He came in the house and says, "I have struck a streak of luck to-day," and he pulled some bills, 3 or 4, and laid them on his knee. The top bill was a $10 bill. Then he pulled out some silver; it looked like $6 or $8 in change.

Q. He had that money about him on Saturday evening before he left?

A. Yes, sir.

Q. It was on Saturday the deceased, Morgan, had been away?

A. Yes, sir; across the river.

Q. Do you know where he had gone?

A. Gone to Bragg Station.

Q. That is about 5 or 6 miles from where you lived?

A. Yes, sir.

Q. In going to Davis', state if they would go by Mrs. Nicholson's and Harnage's and Colquet's?

A. Yes, sir.

Cross-examination:

Col. CRAVENS. You don't know how much money Morgan had?

A. No, sir.

Q. Did you understand from what he said that he got that money the day before at Bragg Station?

A. I don't know where. He just said he struck a streak of luck to-day.

Q. That was after he returned from Bragg Station in the evening?

A. Yes, sir; I asked him no questions about it.

Q. You saw a $10 bill. You don't what else there was, only it looked like he had $6 or $8 in silver in his hand?

A. Yes, sir.

Q. Had he been having any money before that?

76 A. I didn't see any.

Q. You had not heard of his having any?

A. No, sir.

Q. He had been making a crop there?

A. Yes, sir.

Q. And you heard of his having no money?

A. No, sir.

Q. You had not seen any since he had been at your place?

A. No, sir.

Q. He slept at your house?

A. Yes, sir.
Q. Was there any money about his room before that?
A. No, sir.
Q. Defendant came to stay with him on Saturday night?
A. Yes, sir.
Q. Did they sleep together?
A. Well, in the same room.
Q. I will ask you if the defendant had not visited him before that since Morgan had been there?
A. Yes, sir; Morgan had employed him to help him to gather his cotton, and he had been up there a time or two.
Q. I will ask you if you know what the relations were between Sam Morgan and the defendant here as to being friendly?
A. Yes, sir; they were friendly.
Q. State whether there appeared to be a warm friendship or——
A. Very warm; if they had been brothers they could not have been more friendly.
Q. I will ask you if they were not a great deal together before this.
A. Yes, sir.
Q. I will ask you if you know what the feeling was—what the relations were between Sam Morgan and his brother Bob.
A. They had a little falling out, but I don't know whether they were friendly when they met up or not; but then he quit upon that account, so he told.
77 Q. Before Sam came to live at your place the week before he had been living with his brother?
A. Yes, sir.
Q. Is his brother a married man?
A. Yes, sir.
Q. And Sam was single?
A. Yes, sir.
Q. And after falling out Sam came to stay at your house?
A. Yes, sir.
Q. Did he not speak unkindly of his brother?
A. Yes, sir.
Q. Complaining of the treatment his brother had given him?
A. Yes, sir.
Q. You did not see Sam and his brother meet while Sam was staying at your house?
A. No, sir.
Q. You don't know whether they spoke or not?
A. No, sir.
Q. You were not present when Sam and Robert fell out?
A. No, sir.
Q. All you know is what you learned from somebody?
A. Yes, sir.
Col. CLAYTON. Sam Morgan told you he was going to Mrs. Davis'?
A. Yes, sir.
Q. Did he mention to you anything about going anywhere else?
A. No, sir; he told me was going to Davis' to see the girls.

Q. You never had any intimation that he was going to the Pawnee Agency?

A. No, sir.

Q. Had you ever heard him mention Pawnee Agency?

A. No, sir; I never heard him say a word about it.

Q. Do you know how far it is to the Pawnee Agency from there?

A. No, sir.

Q. You know there is such a place?

A. Yes, sir.

Col. CRAVENS. How long have you known Bood?

A. From childhood.

Q. Had you known him intimately?

A. Yes, sir.

Q. Had he been raised in that neighborhood?

A. Yes, sir.

Q. His father was dead, I believe?

78 A. Yes, sir; so far as I know.

Q. His mother married his stepfather, Mr. Burris?

A. Yes, sir.

Q. He did not live very far from you?

A. No, sir; about a mile from where I live to Burris'.

Q. And Bood has been raised there?

A. Yes, sir; he has been in the settlement there for 12 years.

Q. He was a small boy when you first knew him?

A. Yes, sir; I knew him all his life; I knew him back in Georgia before he came here.

Q. I will ask you if you know what his general reputation is as to being a peaceable and law-abiding and honest man.

A. Good, as far as I know, up to this thing.

The COURT. Do you know how the people generally regarded him?

A. I never heard his character discussed; I heard it was good up to this time.

Col. CRAVENS. I will ask you if he was not regarded as a kind of a cowardly boy, that would be imposed on before he would resent anything.

A. Well, I don't know, sir.

Col. CLAYTON. I will ask you if you know his character for being a peaceable, law-abiding, honest man; you say you never heard it discussed. Have you not heard of his being charged with stealing money up there or a pistol?

A. Why, no sir; I never heard it.

Q. Do you know a Dutchman up there who had a wife somebody ran off with?

A. Yes, sir.

Q. Who ran off with her?

A. It was Bood, I heard.

Q. Did you know Tom McDaniel?

A. Yes, sir.

Q. Hadn't it been the talk in the neighborhood that the defendant stole McDaniel's pistol?

A. I never heard it.

Q. Where did the Dutchman live?

A. Out on the prairie.

79 Q. How old was the Dutchman's wife?

A. I couldn't tell you.

Q. Do you know where the defendant took her to?

A. To Tahlequah, I believe.

Q. How long had he lived there with her?

A. I don't know?

Q. Do you know whether he afterwards abandoned her?

A. Yes, sir; I guess he did; she came back home all the same.

Col. CRAVENS. I will ask you if it was not the understanding there that she had fell out with her husband and she got the defendant to take her to Tahlequah and that was as far as he took her and as far as she went?

A. Yes, sir.

Q. That is, the capitol of the Cherokee Nation?

A. Yes, sir.

Q. How far is that from where you lived?

A. About 25 or 30 miles.

Q. She was a Downing or related to the Downings?

A. No, sir; I don't think she was; she might be; I don't know.

Col. CLAYTON. You had learned he lived with her improperly?

A. I can't say he lived with her.

Q. Did you learn he lived with her up there?

A. I couldn't tell you how long; not a great while.

Q. How long did he stay up there?

A. He was in some kind of business.

Q. And you learned he was living with this woman improperly, too, didn't you?

A. Well, no, sir. A lady told me he brought her there and left her.

Q. You told me a while ago you understood he lived there with her.

A. I don't know. He carried her there and this lady told me he was in business there, but whether he lived with this woman or not I don't know.

Q. Did you never hear?

80 A. The settlement said he had run off with her and gone to Tahlequah; that is what I heard around there.

Q. It was the understanding in the community that he was living with her improperly?

A. I didn't hear that.

Q. What do you mean by saying he ran off with her and took her to Tahlequah? I should think that he was living with her.

A. She did not stay a great while there. This lady said he left her there.

Q. You certainly understand what I mean. What did the people say?

A. They said—all I heard, he taken the Dutchman's wife and gone to Tahlequah with her.

Col. CRAVENS. I don't think it is competent. I object to it. I don't think that it tends to illustrate the defendant's conduct or the action of the defendant with this affair. The question I asked her which has led to this was: Did she know the general reputation of the defendant in the

community? And she said she knew him since childhood as a peaceable, honest, law-abiding citizen.

The COURT. I think it might effect his law-abiding character. Of course, the primary trait in issue is as to his disposition to use violence upon his fellowman. I think it is competent.

M. M. EDMISTON—Recalled.

Col CLAYTON. State if in the examination of this body you found any money?

A. No, sir.

Col. CRAVENS. Did you make any examination of his pants pockets?

A. I don't know whether he had any hip pockets or not; I examined all the other pockets.

Q. You did not examine his hip pockets?

A. No, sir; he might have had hip pockets and might not.

81 Q. I will ask you if pants such as he wore don't generally have hip pockets?

A. Well, that is my .

Q. They appeared to be bought from the store?

A. I think they were store goods.

Q. I will ask you if they don't always have hip pockets?

A. As far as my knowledge goes they do.

Q. You did not examine the hip pockets?

A. I did not.

MARY H. NICHOLSON.

Col. CLAYTON. Where do you live?

A. 10 miles east of Muskogee, on the Arkansas River.

Q. How far do you live from Mrs. Harris'?

A. It is ½ mile or ¾.

Q. Does not Mr. Grider live between you and Mrs. Harris?

A. Yes, sir.

Q. Did you know Sam Morgan in his lifetime?

A. Yes, sir.

Q. Do you remember the day he was missing?

A. Yes, sir.

Q. Did you see him on that day?

A. Yes, sir; about 200 yards from the house.

Q. Where was he?

A. On a horse, just in the road, riding along.

Q. Anybody with him?

A. Yes, sir; Bood Crumpton.

Q. This man (pointing to defendant)?

A. Yes, sir.

Q. Do you know where Harnage lived?

A. Yes, sir.

Q. Were they going towards Harnage's?

A. Yes, sir.

Q. Do you know what time they passed your house?

A. Between 8 and 9 o'clock.
Q. Do you know where the body was found?
A. No, sir; I never was there.
Q. What day of the week was that?
A. On Sunday morning.
82 Q. What month?
A. November.
Q. Did you notice the horses they were riding?
A. Yes, sir.
Q. Whose were they?
A. Sam Morgan's.
Q. Did you know his horses?
A. Well, of course, I didn't know they were his particularly, but he was generally always in possession; there was a grey one and a spotted one.
Q. That was at what hour?
A. Between 8 and 9 o'clock somewhere.
Q. That was on the day that Morgan was missing?
A. Yes, sir.
Q. Did you ever see any more of Sam Morgan after that?
A. No, sir; I never seen him since.

Cross-examination:

Col. CRAVENS. How far were you from them?
A. About 200 yards.
Q. You did not speak to them nor they did not speak?
A. No, sir.
Q. You lived about ¾ mile from Mrs. Harris'?
A. Yes, sir.
Q. Do you know where Black Hoyt and Mrs. Vann lives?
A. Yes, sir; I am very well acquainted with them.
Q. What direction do you live from Black Hoyt's?
A. South.
Q. Then at the time you saw them they were going in the direction of Black Hoyt's?
A. Yes, sir.
Q. And in the direction of Mrs. Vann's?
A. Yes, sir.
Q. You live about ¾ mile from Mrs. Harris'?
A. Yes, sir.
Q. And they were going in the direction of Hoyt's and Vann's?
A. Yes, sir; they were just going along the road, the straightforward road.

H. L. HOYT.

Col. CLAYTON. Are you the one they call Black Hoyt?
83 A. Yes, sir.
Q. Where do you live?
A. About 8 miles east of Muskogee.
Q. (Showing map). Did you see this map when it was made?
A. Yes, sir.
Q. Where do yon live there?

A. At the forks of these roads.
Q. Whose field is that put down there as Vann's field; is that right?
A. Yes, sir.
Q. How far do you live from Mrs. Harris'?
A. About a mile and ¾.
Q. Then she would live about there?
A. She did not live any farther from Muskogee than I did; she could go this way.
Q. How far do you live from Mrs. Nicholson's?
A. About a mile.
Q. Do you know where Davis lives.
A. Yes, sir; a way up on the river, about 3 miles from Muskogee.
Q. Do you know where Lowry's field is?
A. Yes, sir.
Q. In going from your house to Muskogee how close to that field would you pass?
A. I suppose ½ mile.
Q. Do you remember the day Sam Morgan was missing?
A. Yes, sir; I don't remember the exact day of the month, I know it was about the first of November, on Sunday.
Q. Did you see Sam Morgan that day?
A. Yes, sir.
Q. Where were you?
A. I was at home; they came up to my house and I went down there and I seen them last there.
Q. You were at home and you seen Sam Morgan; was there anybody with him?
A. Bood Crumpton was with him.
Q. Riding or walking?
A. Riding.
Q. What horses were they riding?
A. Crumpton was riding the grey horse and Morgan the spotted horse.
Q. Whose horses were they?
84 A. I don't know hardly, both boys claimed it.
Q. Who had them in possession at that time?
A. Sam Morgan.
Q. What time of day was it you saw them?
A. About 10 or 11 o'clock I seen them last.
Q. State if you talked to them; if they stopped?
A. Yes, sir; I don't think they staid but a few minutes at my house; then they went down to Harnege's and a few minutes afterwards I went down there. They staid, I suppose, ½ hour at Harnage's.
Q. At his house?
A. No; it is a barn or lot here.
Q. That is here in Vann's field?
A. Yes, sir; the lot joins onto the field; there is a lot there with cribs in it and it was at that lot they stopped.
Q. Who was there besides you?
A. I found there Morgan and the defendant and Harnage and Charley Vann.
Q. Did you see Lowry there?

A. He came there a few minutes after I did.
Q. You mean at Harnage's barn?
A. Yes, sir; Vann's really. There was several others there.
Q. Anybody else there?
A. Harrison Dike and Bob Dike came there and Morgan came there.
Q. That is Robert?
A. Yes, sir.
Q. Do you remember whether Crawford was there or not?
A. I don't remember about him.
Q. Are you sure Robert Morgan was there before the boys left or after?
A. I ain't sure; he was there, I know.
Q. You say they staid there about ½ hour?
A. Well, it might have been an hour.
Q. State if they left together and in what direction they went?
A. Sam Morgan, he loped off on his horse ahead a minute before
85 Burris left; I suppose Morgan was 100 or 200 yards ahead of him when he went off.
Q. What direction did he go?
A. North.
Q. Towards Colquet's?
A. Yes, sir.
Q. Is that the last you saw of them?
A. I seen Crumpton that evening.
Q. Have you ever seen S. M. Morgan since?
A. No, sir.
Q. You saw the defendant again that evening. Where?
A. He was at Grider's.
Q. S. M. Morgan was not with him?
A. No, sir.
Q. Did you see him when he came to Grider's?
A. No, sir; he was there when I was going by.
Q. What time in the afternoon was it?
A. I suppose 4 o'clock.
Q. Do you know whether he was on horseback or on foot?
A. On horseback.
Q. What horse?
A. He was riding the grey horse, the same horse he went off on in the morning.
Q. Did you have any talk with him there at Grider's as to what became of Sam Morgan?
A. Yes, sir; I stopped there awhile and he got on his horse and came down the road with me.
Q. What direction did you go?
A. I went south, I guess, southwest. I went around this way [showing on map].
Q. That is south?
A. Yes, sir.
Q. Where is Smith's?
A. About 2 miles from Harris', around up this way.
Q. Does he live on this road?
A. No, sir; up that way like.

Q. You went back that way with him?

A. Yes, sir.

Q. Did you have any talk with him as to what became of Morgan?

A. He told me Morgan got in a buggy with some man and
86 went out somewhere to work for him.

Q. How came he to tell you that?

A. I asked him what become of Sam, and he said he got in a buggy with a man to go in the strip somewheres out there to herd a bunch of horses and take care of them some way; and that he was going to give him $3.50 a day, I believe; and he said he left everything in his charge and he had the crop on my place and told him to take charge of that and attend to it.

Q. Where did he say he got in the buggy with the man?

A. Somewhere about Davis', I believe; I don't know exactly; I don't remember. I believe the defendant claimed that he bought one of the horses or something. I never paid much attention to what he was telling me.

Q. Had the defendant ever worked for you?

A. Yes, sir.

Q. Had Sam Morgan ever worked for you?

A. He worked; just made a crop on my place—well, yes, he worked several days for me, too.

Q. Do you know whether Morgan had any money or not?

A. I don't know whether he had any that day or not; I loaned him a dollar or two the day before.

Q. Where was that?

A. At my house.

Q. What time of day was that? Was it on Saturday you loaned it to him?

A. Yes, sir; I loaned him $2. He claimed he wanted to pay a man was picking cotton for him.

Q. What time in the morning was it?

A. It was on Saturday evening.

Q. What kind of money did you let him have?

A. I believe it was three half-dollar pieces and the balance in nickels and dimes.

87 Q. Did you see the defendant have any money after the disappearance of Morgan?

A. Yes, sir; I received the same kind of money back from him.

Q. How came he to pay the money?

A. Why, he got to gambling; I played with him and won it from him.

Q. Do you know whether or not the deceased Morgan owned a pistol?

A. I don't know; I seen him with one.

Q. Do you know whether or not the defendant, when you saw him after this killing, had a pistol?

A. Yes, sir; I think he did; I won't say positive; I seen him with a pistol; I never seen what kind it was.

Q. Would you know Morgan's pistol if you were to see it?

A. No; I wouldn't.

Q. Examine that [handing pistol to witness].

A. I seen him with one like that.

Q. When?
A. It was Saturday evening, I believe.
Q. Before he was missing?
A. Yes, sir.
Q. When was it you were playing cards with the defendant?
A. It was a day or two afterwards.
Q. I understood you to say on Saturday before Morgan was missing you loaned him $2—three half-dollars and the rest in small money—and 2 or 3 days after Morgan was missing you won such money from the defendant?
A. Yes, sir.
Q. Do you remember what it was you got from him?
A. $2.
Q. What kind of money?
A. Three half-dollars and the balance in small change.
Q. Do you know whether Sam Morgan owned an overcoat or not?
A. Yes, sir.
Q. What kind was it?
A. A black one.
Q. Do you know what became of that?
88 A. I seen Crumpton with it that evening.
Q. After he came back?
A. Yes, sir.
Q. Do you know if Morgan had it on the day you saw him on horseback?
A. I couldn't say positive; he might have had it tied on behind the saddle.
Q. That evening, when you saw the defendant at Grider's, did he have the overcoat then?
A. Yes, sir.
Col. CRAVENS. Tied behind the saddle?
A. Yes, sir.
Col. CLAYTON. Did you ever see the defendant with a pistol before Morgan was missing?
A. Yes, sir.
Q. Do you know what became of that pistol?
A. No; I don't.
Q. How far did you live from where Bob Morgan lived?
A. About ¾ mile.
Q. It was on your place these men were living?
A. Yes, sir.
Q. Do you know anything about a razor that was owned by Morgan?
A. I knowed he owned one, but I don't know whether Crumpton had a razor there; I don't know whether it was the same one Morgan had.
Q. Do you know of the defendant having a razor after Morgan was missing?
A. Yes, sir.
Q. When did you first see him with it?
A. Why, he brought it there to my house.
Q. How long afterwards?
A. I couldn't say; it might have been a week or 4 or 5 days.

Q. Had you ever seen him with it before that—Crumpton?
A. No, sir; I never seen him with a razor before.
Q. Did he bring anything else besides the razor?
A. Yes, sir; a hone.
Q. Do you remember the kind of hone that was?
89 A. Well, I don't know; it was a white looking one.
Q. Do you know whether both sides of it were white or not?
A. I don't remember.
Q. It was about a week after Morgan was missing when he brought that razor to your house?
A. Yes, sir.
Q. Did he leave it there?
A. Yes, sir; I believe after they arrested him some time he sent his cousin back there and got it.
Q. How long after you first saw him on Sunday evening before he told you about Morgan's going off in the buggy and that Morgan had left everything he had in his charge?
A. It wasn't very long; he got on his horse and rode down the road with me; I believe he went as far as uncle's with me.
Q. You did not see the body?
A. No, sir.
Q. Would you know his watch if you were to see it?
A. I would know whether it was like the one he had or not.
Q. (Showing watch and chain.)
A. That is just like the one he had; I couldn't say whether it is the same one or not.
Q. What about the chain?
A. He had a chain like that.

Cross-examination:

Col. CRAVENS. I believe you say that Crumpton and Morgan came to your house together on Sunday morning?
A. Yes, sir.
Q. And went from there to Harnage's?
A. Yes, sir.
Q. And you went with them?
A. I don't know whether I went with them or not.
Q. Hadn't the defendant been working for you?
A. He had been working for me some 4 or 5 days, I think.
Q. When was he last at your house before Sunday?
A. Saturday evening.
Q. Ain't you mistaken; hadn't he been working for you that
90 week or the forepart of that week?
A. I don't remember; he was down at Mrs. Harris' about as much as he was at my house.
Q. He was at home both at your house and Mrs. Harris' pretty much?
A. Yes, sir.
Q. And Sam Morgan was the same, wasn't he?
A. Yes, sir.
Q. When they came over to your house on Sunday morning didn't Morgan go over to Harnage's right away without stopping at your house,

and didn't the defendant here go and help you to feed and water your hogs? You had some fattened hogs?

A. Yes, sir.

Q. Didn't he go and help you to feed and water the hogs and then you and he went over to Harnage's and found Morgan and the others playing cards over there?

A. I don't know.

Q. Don't you remember he helped you that morning to feed your hogs and water them?

A. I don't remember whether he did or not.

Q. (Reading.) Defendant worked for me on Sunday when they came to my house; defendant helped to water and feed the hogs; then I went over to Harnage's with the defendant. That is your examination before the commissioner on the 4th of January last, shortly after this thing occurred. Your recollection would be better then than now?

A. I don't know whether it was or not.

Q. It would be likely better after the occurrence than a year afterwards?

A. Yes, sir; a good many little things I have forgotten, too.

Q. Of course, that is natural. I read you your statement. You had some fattened hogs at that time?

A. Yes, sir.

Q. Don't you remember Bood here helping you to feed and water them that morning?

A. I couldn't say positive whether he did or not.

Q. If you stated before the commissioner that he did, you
91 knew how it was then; that is correct?

A. I don't think I stated positive that he did.

Q. Is your recollection of it now better than then?

A. I don't know.

Q. Wouldn't it likely be better then than now?

A. I expect so; it has been a good while.

Q. Where was it you had the hogs up at that time?

A. Right below my house lot.

Q. Where was it you first saw the defendant that morning?

A. I think he came to my house; I know he did.

Q. On what part of the premises did you see him?

A. I don't know.

Q. Was he on his horse when you first saw him?

A. I don't remember that.

Q. Were you sober or drunk that morning?

A. Sober.

Q. Entirely so?

A. Yes, sir.

Q. Do you remember going over to Harnage's with the defendant?

A. I don't know whether I went with him or not?

Q. Were you at Harnage's that day?

A. Yes, sir.

Q. Was Sam Morgan there?

A. Yes, sir.

Q. How far is Harnage's from your house?

A. About 300 yards.
Q. What did you go to Harnage's for?
A. I just walked over there; I didn't have any business at all.
Q. Is that on your place?
A. No, sir.
Q. When you went over there did you go in the house?
A. No; there was a lot of boys at his barn lot and I stopped there.
Q. Did you go to the barn first?
A. Yes, sir; I don't remember whether I was at the house at all or not.

Q. It was about 10 or 11 o'clock you first saw them?
92 A. Yes, sir; when I seen them at Harnage's.
Q. Had you seen them before that?

A. Yes, sir; I seen Crumpton; I couldn't say whether Morgan came to my house with him or not. I believe one came first and then in a few minutes afterwards the other one came; I don't know which came first, but I know both were there.

Q. Didn't Morgan go over to Harnage's first, and then you and Bood went over together afterwards? I wish you would try and think how that was.

A. I don't remember about that; I know they were both there at Harnage's together.
Q. They were playing cards there, the boys that were there?
A. Yes, sir.
Q. How long did they stay at Harnage's?
A. I reckon ½ hour or an hour.
Q. That would bring it up towards 12 o'clock?
A. Yes, sir.
Q. Where were they going to?
A. I don't know; I believe one of them said they were going to Davis'.
Q. Who said that?
A. I don't remember which one.
Q. You recollect that one said it?
A. Yes, sir.

Q. When they left there I will ask you if Morgan did not ride up the road 40 or 60 yards before the defendant, and called to him to come on?
A. Yes, sir; I expect it was 200 yards up the road.
Q. He was in sight, was he?
A. Yes, sir.

Q. Didn't he call on him 2 or 3 times before Bood got on his horse and followed?
A. I don't remember how many times he hollered.

Q. But do you remember he rode some 200 yards up the road and then called on Bood?

A. Yes, sir.
93 Q. Then finally Bood got on his horse and followed in the direction he went, did he?
A. Yes, sir.
Q. When you saw Crumpton that evening it was about 4 o'clock?
A. Yes, sir.
Q. When you went to Grider's you found him there and he got on his horse and rode down towards Smith's?

A. Yes, sir.

Q. Did he go to Smith's?

A. No; I believe I found Smith there at Burris', and I never went any farther.

Q. Grider's is between Mrs. Harris' and your place?

A. Yes, sir.

Q. And when you got to Burris' you found Smith there and you and he stopped there?

A. Yes, sir.

Q. Did he go to Smith's?

A. No; when I got ready to go back he got on his horse and came back too, and I don't know whether he stopped at Mrs. Harris' or went on to my house.

Q. Did he stay at your house that night?

A. I don't remember.

Q. But he went down to his stepfather's with you?

A. Yes, sir.

Q. How far is Burris' from Mrs. Harris'?

A. About a mile and a half.

Q. How far is Burris' from Grider's?

A. It is about a mile and $\frac{3}{4}$, he didn't live more than a $\frac{1}{4}$ from Mrs. Harris'.

Q. How long did you stay at Burris' that evening?

A. Not over 10 minutes, I don't reckon.

Q. When you went back he got on his horse and rode back with you and either stopped at Mrs. Harris' or went to your house, and you don't remember which?

A. No, sir.

Q. As you went back to your house from Burris' you would pass by Mrs. Harris'?

A. Yes, sir.

94 Q. You say that evening he had Sam Morgan's overcoat or one that looked like it?

A. Yes, sir.

Q. That was tied on behind the saddle he was riding on?

A. Yes, sir.

Q. There was nothing said about the overcoat any more? Did you ever see the overcoat any more?

A. I don't know whether I did or not.

Q. Are you positive you saw it that afternoon?

A. Yes, sir.

Q. What attracted your attention to the overcoat?

A. I just noticed it tied behind the saddle. I don't know whether I said anything to him about the overcoat or not.

Q. On the evening before, Saturday evening, you loaned Morgan $2?

A. Yes, sir.

Q. He borrowed that to pay for picking cotton?

A. Yes, sir.

Q. Who did he want to pay?

A. I believe it was a man by the name of Bean.

Q. Was Bean the man who was picking cotton for him?

A. Yes, sir.

Q. Are you able to tell what kind of money it was you loaned him?

A. I noticed three half-dollar pieces and the other was in nickels and dimes.

Q. Do you know how many nickels?

A. No, sir.

Q. How many dimes?

A. I loaned him ½ dollar in nickels and dimes; I could not say whether they were all nickels or dimes; I know it was small money; it might have been mixed up, part of——

Q. Yes, it might have been paper, it might have been anything. I want to know if you remember what it was. Might it not have been all dimes or all nickels. You don't know whether it was 5 dimes or 10 nickels?

A. No, sir.

95 Q. But it was 50 cents in small change, either 10 nickels or 5 dimes or dimes and nickels and you don't remember which it was?

A. No.

(Adjourned till 1.30 p. m.)

(Followed by Rider's "B.")

96 MAY 28TH, 1890—1.30 p. m.

H. L. HOYT—Continued.

Col. CRAVENS. You say you do not know what kind of money it was you let him have, except that it was a dollar and a half, whether the fifty cents was in nickels or dimes or nickels and dimes?

A. Yes, sir.

Q. When was it after that that you won some money from the defendant?

A. Four or 5 days.

Q. Do you know what kind of money it was you won?

A. Yes, sir.

Q. What kind?

A. Just like the money I said I let Morgan have.

Q. How many half dollars did you win?

A. There was three, and then the nickels and dimes, whatever it was.

Q. Do you know whether you won nickels; whether there was ten nickels and five dimes, or what it was?

A. No, sir.

Q. You do not know whether there was any nickels or any dimes; you only know it was fifty cents in small change?

A. Yes, sir.

Q. Do you not know which it was?

A. No, sir.

Q. I believe you say you do not know the pistol which the deceased had?

A. No, sir; I don't know it.

Col. CLAYTON. He said it was a pistol like this [exhibiting pistol which has been introduced in evidence.]

Col. CRAVENS. Yes; he said it was a pistol like that.

Q. You said something about his having a razor and a hone—you saw him with one—when was that?

A. Awhile after Morgan disappeared.

Q. Did you know whose it was? Did you learn from him whose it was?

A. No, sir.

97 Q. Where was it he had it?

A. At my house; brought it there.

Q. You do not know who it belonged to?

A. No, sir.

Q. He was not concealing it there, was he—hiding it?

A. No, sir; he brought it there it might have been one Sunday morning, and he shaved himself there with it.

Q. On the evening after you saw Bood and Morgan together he told you that Sam had got in a buggy with somebody and gone off to the strip, going in that direction; you do not remember exactly what he said about where he was going?

A. No, sir.

Q. But he was going to work with a herd of ponies, or work with a drove of horses?

A. Yes, sir.

Q. And that he was offered three dollars and a half per day?

A. Yes, sir.

Q. When they left Mrs. Vann's that Sunday morning what road did they go and what direction?

Q. They went north.

Q. (Showing witness map.) You say they were at Harnage's lot or pen or barn?

A. Yes, sir.

Q. That is on the left-hand side of the road as you go north?

A. Yes, sir.

Q. That road runs north a little ways and then runs west, does it not?

A. Yes, sir; it kind of turns to the left as you go around.

Q. How far is it from your house to the white church?

A. About two miles and a half.

Q. Is there a road leading from Lowry's across there to the white church?

A. Yes, sir; you have to go back this way and take another road.

Q. It turns off before you get to Lowry's?

98 A. Yes, sir; it turns off between Mrs. Vann's and Lowry's. There is a man named Wolf lives up there.

Q. How far from Lowry's?

A. About half a mile.

Q. There is a road across from Wolf's to the white church, is there?

A. Yes, sir.

Q. Is that a big road or trail?

A. Public wagon road.

Q. Do you know where Bradley lives?

A. Yes, sir.

Q. He lives on the same side of the creek as you do. From Bradley's (or Bartles) isn't there a road leading to the white church?

A. He lives by Lowry's. That road that I was telling you about is the only road by Lowry's place.

Q. How far is it from Bartle's to Lowry's?

A. About 200 yards.

Col. CLAYTON. Where did Bradley (or Bartle) live at that time?

A. He lived away up here a mile above Lowry's.

Q. (By Col. Cravens.) Bradley lived up further north then, did he?

A. Yes, sir. (Witness explains location of different roads on map.)

Q. Up here at that place where Bradley lived, a mile from Lowry's, how far is the house where he lived from Coody's Creek?

A. I do not suppose it is over three or four hundred yards.

Q. How far is it from Bradley's to the ford?

A. A mile and a half.

Q. Where Bradley lived at that time?

A. Yes, sir.

Q. Where the north road from your house goes to Muskogee?

A. Yes, sir.

Q. But past where Bradley lived then, a mile and a half before you get to the ford?

A. Yes, sir.

99 JAMES M. LOWRY.

Col. CLAYTON. State your name, please.

A. James Lowry.

Q. Where do you live?

A. In the Cherokee Nation, Canadian district.

Q. Did you know Samuel Morgan in his lifetime?

A. Yes, sir.

Q. Do you know the defendant here?

A. Yes, sir.

Q. Please state if you saw the defendant and the deceased on the day that the deceased was missing from that country up there.

A. Yes, sir; I seen him.

Q. Do you remember what day it was?

A. It was on the third day of November last.

Q. What day of the week was that?

A. On Sunday.

Q. Where did you see him?

A. I seen him at Charley Vann's lot at Harnage's. (Witness locates on map where he saw parties.)

Q. Where were you?

A. I was there at the lot.

Q. Who else was there?

A. Well, there was several there; I don't know that I remember all that was there.

Q. Name all you remember.

A. Black Hoyt, Charley Vann, a fellow they called Ramsey, and several others, I don't remember just who they were.

Q. State how they came there.

A. Well, sir, they came there together.

Q. On horseback or afoot?

A. Horseback.

Q. What horses were they riding?

A. One was riding a grey horse, Bood Crumpton was riding a gray horse, and Sam Morgan was riding a spotted one.

Q. How long did they remain there?

A. I don't know, sir, how long.

100 Q. Well, about how long, to the best of your recollection?

A. About an hour, I guess.

Q. If they left when did they leave, and in what direction did they go?

A. They left about 10 o'clock, as well as I remember. They went out west, a little northwest, from there.

Q. They went on that road leading from Musgokee?

A. Yes, sir; Sam Morgan got on his horse and lope l off 100 yards, and he hollered at Bood Crumpton to come on "if you are going with me," and Bood set there and talked with another fellow and he left and caught up with him and then they went on together. I saw them go on together in that direction towards Muskogee.

Q. Do you know where they were going?

A. I don't know. They did not say in my presence where they were going. Bood, when Morgan called to him, pretty soon jumped on a grey horse and went on and catched up with him. I didn't see any more of Morgan after that.

Q. Did you see anything of the defendant?

A. Yes, sir; three or four days after that I saw him. I don't remember where I saw him.

Q. Did they get off their horses at this man's lot there?

A. Yes, sir.

Q. What were they doing there, and what were you all doing there?

A. They were playing cards.

Q. Seven up?

A. Yes, sir.

Q. Who was the defendant talking to?

A. He was talking about running a pony race with Ramsey.

Q. Where was the body found; do you know?

A. Yes, sir.

Q. How far were they when you saw them at Harnage's from the place where the body was found?

A. Near about 2 miles.

101 Q. Was Harrison Dyke there?

A. Yes, sir.

Q. You say you have never seen the deceased alive since?

A. No, sir.

Q. How long after that was it you saw the defendant?

A. I do not remember; it is three or four days.

Q. Did you hear him say anything about Morgan?

A. No, sir.

Q. You never saw anything more of Morgan?

A. No, sir.

Q. Where was it you saw the defendant next?

A. I do not remember.

Q. Have you ever seen Morgan, either dead or alive, since?

A. I seen a dead man; I don't know whether it was Morgan or not. It had clothes that looked like Morgan's clothes that he wore, like he had the day I saw him. I saw it over there on the Arkansas River, at my place, about a mile from my house.

Q. I believe you were not at home at that time?

A. No, sir.

Q. You were up at Harnage's?

A. Yes, sir.

Q. How far does Harnage live from you?

A. About a mile.

Q. When did you see this body?

A. It was on the 24th of December, about 10 or 11 o'clock, somewhere along there.

Q. Were you there before the body was taken up?

A. Yes, sir; I didn't help to take it up. I seen a watch taken out of his pocket by old man Dykes.

Q. What became of it?

A. The last I seen of it Bob Morgan had it.

Q. Did he have it that day?

A. I don't know whether he had it or not. He wasn't there at the time it was taken out of the pocket. He came afterwards.

Q. (Handing witness watch.) Examine that watch. Is that it?

A. That is just like the watch; it had a chain and charm on it
102 just like that.

Q. That was taken from his body before he was taken up?

A. Yes, sir.

Q. Did you see his hat?

A. Yes, sir; I seen it in an hour or two after he was taken up. I don't know who took the hat out of the hole.

Q. How was the body when you saw it first?

A. The head was kind of so (indicating), and the knees were drawn up this way [indicating]. I could just see one knee that way; I could see part of his head. Mr. Dyke got down in the hole and commenced hunting for the watch, and pulled the watch and chain out of his pocket while he was in the hole.

Q. Did you go off then?

A. Yes, sir; I went to tell Bob Morgan we thought it was Sam. Mr. Dyke got down in the hole there and he said maybe it was Sam Morgan, and he then commenced to hunt for the watch, Mr. Dyke did, and got it out of his pocket.

Q. Did you come back with Bob Morgan?

A. No, sir; I staid at home. I went on in a few minutes after he left and got there a few minutes after he got there.

Q. When you got there they had the body taken up?

A. Yes, sir.

Q. Who was at the body when you went there first?

A. There was several there; I don't know just who all was there.

Q. Was George Willains there?

A. He came after I got there.

Q. Was he there when the body was taken up?

A. Yes, sir; he said he was.
Q. Was old man Dykes there.
A. Yes, sir.

Q. Now, then, when you got there the second time after going off
103 to tell Bob Morgan you came back and found the body was taken up?

A. Yes, sir.
Q. What did you observe about the body, if anything, when it was taken up?
A. I didn't notice much of anything?
Q. You saw it was a human body?
A. Yes, sir.
Q. When did you find the body?
A. The day before Christmas; that is the first time I saw it.
Q. In going from your house to that place how would you go?
A. There is two other ways to go; you could go through the woods or go the trail way; go the road and turn off the trail way.
Q. Could you go down there with your horses?
A. Yes, sir.
Q. How would you get through the fence?
A. Let the fence down; it is inside of a field.
Q. You helped to make this map, I believe?
A. Yes, sir. (Witness explains map to jury.)
Q. When you last saw these men they were going on the road you would go if you were going to where the body was found?
A. Yes, sir.
Q. Were you in the game of cards there?
A. No, sir; I don't remember how long I had been there.
Q. Did this defendant ever work for you?
A. Yes, sir; he worked for me before this Morgan was killed; this spring was a year ago that he worked for me.
Q. Did he ever do any work up in and around where that hole was?
A. Yes, sir. We made a brush fence along on the bank of the river. I helped to build that, a brush fence that runs between that hole and the river. He knew where that hole was, for we cut the brush off from around it and made the fence with it; it looked just like a cottonwood tree
104 had rotted out where the hole was.

Q. Did you know of this hole being there prior to this man being buried there?
A. Yes, sir; I knew there was a hole there. I seen it when I was cutting the brush from around it making fence?
Q. Did you and Bood have any talk about it?
A. No, sir; he was helping me to make fence, but I never heard him say anything about it though.

Cross-examination:

Col. CRAVENS. That hole was about 6 feet deep you say?
A. I don't know; somewheres about 4 or 5 feet deep. I don't know.
Q. How tall are you?
A. 5 feet 11 inches.
Q. It was as high as your head?

A. I don't know; I never was down in there.

Q. When was that fence put around there?

A. It was last spring.

Q. Bood was not the only person who knew about that hole being there I presume, was he?

A. I don't know; there was a man on the place that was working the place, men working there.

Q. Men worked the place last year?

A. Yes, sir.

Q. Who were they?

A. I rented it to Lawson.

Q. How many Lawsons were there?

A. There was the old man and that Jim Lawson that testified here, and there was a colored fellow that staid there, I believe his name was Frank, is all I ever heard. He staid with Mr. Lawson.

Q. How far is it from where you lived to Davis'?

A. Well one way around the road it was about three miles and a half; then there was a way you could go that was about 3 miles.

Q. Davis lived about 3 miles from Muskogee, did he not?

A. It was 4 or 5 miles; over 4 miles I think.

105 Q. You lived right close to Black Hoyt's?

A. Yes, sir.

Q. Was this body in the first field about the mouth of the creek?

A. Yes, sir.

Q. What would be the next road going this way (indicating)?

A. Syke's field, and the next one belonged to Mr. Robinson now. Watson lived on it last year.

Q. First the Lowry field, then the Syke's field, then the Watson field?

A. Yes, sir.

Q. Do you know where a man named Key lived in there or had a place in there?

A. I don't know of any man of that name.

(Witness is shown a map drawn by attorneys for defense.) I do not understand this map at all.

Mr. WOLFENBERGER. Do you know a man named Keyes?

A. Yes, sir; I know a man named Keyes.

Q. Keyes stays at Mrs. Bible's place the most of the time, does he not?

A. I don't know anything about that. (Witness locates position of different houses, roads, &c., on map which is then shown jury by Col. Wolfenberger.)

Col. CRAVENS. Was there any gate leading into that field, any bars?

A. No, sir.

Q. No way of getting in except by laying the fence down?

A. No, sir.

Q. Nowhere at any time around the field did you find where the fence had been laid down?

A. I never noticed; I didn't see any place. I don't know of any place where it had been laid down.

Q. One could drive on the side of the field next to the creek—one could drive between the creek and the field with a buggy couldn't they?

A. No, sir.

106 Q. I thought there was an open way between the creek and the field?

A. No, sir; not that a buggy or wagon could go through.

Q. Is it timber there?

A. Yes, sir.

Q. This is about a 45-acre field?

A. Yes, sir.

Q. That fence there runs right on the back of the creek?

A. Yes, sir.

Q. There is no travel-way here?

A. No, sir.

Q. Can one ride along here between the fence and the creek?

A. Yes, sir.

Q. It was about 450 yards from the body to the creek?

A. Yes, sir.

Q. About a mile from where the body was up to the ford on Coody's Creek?

A. Yes, sir; a little over a mile. I don't know whether it was as much as a mile and a half, but it was some over a mile.

Q. How far is it from the body up to this trail crossing?

A. It was about 1,000 or 2,000 yards.

Q. That is not a wagon crossing?

A. No, sir.

Q. There is a road that runs down from the ford down between the Watson field and the creek, and down between the Syke's field and the creek, and runs down here to your field?

A. Yes, sir; this is the same road (indicating on diagram).

Q. The ford is above the Watson field?

A. Yes, sir.

Q. How much is there in the Watson farm?

A. I don't know.

Q. There is no*t* way to get between these fields down to the bar—no trail?

A. No, sir; there is no road to get down to the bank.

Q. You saw no sign of where the fence had been let down anywhere around that field?

A. No, sir.

Q. How far would you say it is from where this road strikes the field—where it runs up against your fence there to the ford?

107 A. About 300 or 400 yards.

Q. Was there anybody living in or about the Syke's field at that time?

A. Yes, sir; a fellow named Tucker was living on the upper side of the Syke's field. Watson lived in the Watson field.

Redirect examination:

Col. CLAYTON. Why is that field called the Syke's field?

A. There was a man named Sykes owned it and he died.

Q. Who was in possession of it then?

A. Pete Macleme.

Q. He was in possession of it as administrator?

A. Yes, sir.

HARRISON DYKES.

Col. CLAYTON. Where do you live?

A. In the Chorokee Nation near Muskogee.

Q. How far do you live from where Mr. Lowry lives, the gentleman who just left the stand?

A. About a mile.

Q. Did you know Sam Morgan in his lifetime?

A. Yes, sir.

Q. Do you know this defendant?

A. Yes, sir.

Q. Please state when was the last time you saw Morgan alive?

A. It was on the third morning of November, I believe.

Q. What day of the week?

A. Sunday.

Q. Where did you see him?

A. At Bill Harnage's house, at the barn.

Q. Did you see him when he came there?

A. No, sir.

Q. Do you know how he came, horseback or on foot?

A. Horseback, I think.

Q. What was he riding, do you know?

A. I couldn't tell you which horse he was riding. They were
108 riding a gray horse and spotted horse, Sam and Bood were; they went off riding these two horses. They started off in the direction of Muskogee.

Q. Do you know where the body was afterwards found?

A. Yes, sir.

Q. Were you there at the place?

A. Yes, sir.

Q. When they left that morning did they leave going in the direction or opposite direction from where the body was afterwards found?

A. They left going towards it, going down that road.

Q. What time of day do you think it was when you saw them leave?

A. It was something near 10 o'clock, I would think.

Q. Did you ever see Morgan any more alive?

A. No, sir.

Q. When did you next see the defendant?

A. I couldn't tell you just when it was.

Q. When did you see the body afterwards?

A. I couldn't tell you just the day of the month. I think it was along sometime between the 20th and the 24th of December. I saw it right there close to the mouth of Coody's creek in Mr. Lowry's field, I believe.

Q. Had the body been taken up before you saw it?

A. No, sir.

Q. Where was the body?

A. In a hole.

Q. How much of the body could you see?

A. I could not see but just a little of the head here and a little of one knee, I believe.

Q. Were you there when the watch was taken off of him?

A. Yes, sir.

Q. Who took the watch off?

A. John Dykes, my father. He handed it up to some of the men on the bank, I don't know who took it. They said Robert Morgan got it afterwards.

Q. Look at that watch and see if that is the same watch (witness examines watch).

109 A. I would take that to be the watch. The chain and charm was all on the watch like this. I take it to be the watch.

Q. Had you ever seen it before?

A. Yes, sir; but I had never noticed it.

Q. Did you stay there until the body was taken up?

A. No, sir; I went to Morgan's, me and Lowry did. When we came back the body was up.

Q. Were you there when the papers were taken off by Mr. Edmiston?

A. Well, not all of them; they had the most of the papers out of his pocket when I got there.

Q. You were not before the commissioner, were you?

A. No, sir.

Cross-examination:

Col. CRAVENS. You saw them about 10 o'clock?

A. Yes, sir; something near 10 o'clock.

Q. Were they at this Harnage place when you first saw them, or did you see them come up?

A. I saw them there first. They were there before I got there.

Q. You didn't see Bood down at Black Hoyt's that morning?

A. No, sir.

Q. Mr. Clayton got you to say they left going in the direction of where the body was found; if they had followed the road the day they left that place would they have ever reached the body?

A. I don't know that they would if they had followed the road.

Q. Is there any road crossing the creek between where they

110 were and the body, between Harnage's and the body; in order to get to the body would they have to go here above where the body was and crossed the creek and come right back?

A. They would have to go up some distance above it, I couldn't tell you just right the distance.

Q. It has been said it was a thousand or 1,200 yards from the body to the ford; would not that be about right, don't you think?

A. Yes; I think that would be about right. That was the nearest place they could cross horseback. I would not say just exactly the distance. That is my opinion.

Q. How far would it be to the Rock Ford, the first ford above there?

A. It would be over a mile?

Q. Then in order to get to the body they would have to go away up this way, and then away back this way, starting out from where they were?

A. Yes, sir; they would have to make a kind of a turn.

Q. They would have to go up the creek and cross and come back down to get there.

A. Yes, sir.

Q. They were going in the Muskogee road in the direction of Muskogee?

A. Yes, sir; that is where they started for.
Q. Where did they say they were going?
A. I didn't hear them say.

RICHARD COLQUET.

Col. CLAYTON. Do you live in the Cherokee Nation?
A. Yes, sir; about a quarter of a mile from Harnage's, or a half a mile east of him—at the time that Morgan disappeared last November
111 I was living about half a mile.
Q. Do you know this defendant?
A. Yes, sir.
Q. Did you know Sam Morgan in his lifetime?
A. Yes, sir.
Q. When was the last time you saw him alive?
A. On Sunday morning on the third day of November, I believe. I seen him and Bood Crumpton coming down the road on horseback?
Q. Do you know what horses they were riding?
A. Riding a gray horse and a spotted horse. I don't remember which was riding the gray or which the spotted.
Q. Were they riding along side by side of one another or how?
A. I don't remember how they were riding.
Q. They were going by your house towards Muskogee?
A. Yes, sir; in that direction.
Q. Please state if you ever saw Morgan after that?
A. No, sir; I never did unless it was when he was gotten out of that hole; I never saw him any more alive.
Q. Who were with you when they rode by there?
A. W. A. Burt.
Q. You and Burt were together?
A. Yes, sir. We were about 200 yards or such a matter from the road down there by my house. We were sitting out behind the house, I believe, eating walnuts. We was at the south end of the house.
Q. How far could you see them as they were riding along?
A. We could not see them any more than a couple of hundred yards.
Q. Did you speak to them?
A. No, sir.
Q. You knew who they were, did you not?
A. Yes, sir.
Q. You say you never saw Sam Morgan any more alive; when did you next see the defendant, Bood Crumpton?
A. On the next day, Monday morning; I seen him at Mr. Hoyt's,
112 tolerable early in the morning, I don't know just what time.
Q. Do you know whether Hoyt had been away from home that Monday morning or not?
A. No, sir; I don't.
Q. You do not know where Crumpton came from on Monday morning when he came to Hoyt's?
A. No, sir.
Q. When you got to Hoyt's did you have any talk with Crumpton as to where Morgan was?

A. Yes, sir. He told me he got in a buggy or hack right at the edge of the prairie and had gone out to the Pawnee Agency. That he had met a fellow on the edge of the prairie and got in a buggy or hack, I don't remember which, and had gone out west.

Q. Was Morgan there at your house at that time—Robert Morgan?

A. I don't remember whether he was there when they passed by or not; if he wasn't he came right away.

Q. When you were talking on Monday to Bood Crumpton did he say who the fellow was that Morgan went with?

A. No, I don't think he knowed who he was; I don't think he said who he was.

Q. Did he say anything else about him?

A. He said he was going out to help a fellow with some ponies; that he was to get three dollars and a half a day.

Q. Did he say anything about Morgan's property?

A. Yes, sir; he said he told him to go ahead and gather his crop and take care of it. I don't remember whether he said anything else about that or not. Mr. Morgan had bought this spotted horse and hadn't paid for it, and as he was to leave everything in Bood's hands, I told Bood if he would let me have the horse I would give him $25.00.

Q. You were satisfied at that time that Sam Morgan had gone off?

113 A. Yes, sir; I told him I would give him $25.00 if he would let me have my horse back.

Q. What did he say about that?

A. No, he could not do it.

Q. Did he say anything to you about the gray horse?

A. I don't remember whether he did or not; if there was any talk about that I don't know.

Q. Did you ever see a letter he claim to have gotten from Sam Morgan?

A. Yes, sir.

Q. Tell us about that.

A. I never read the letter; I seen it, but I couldn't tell you what was in the letter. Crumpton brought it to where I was in the cotton patch, where me and Burt was picking cotton, and he said he had got a letter from Sam Morgan, and he taken the letter out and Burt taken the letter and read it; and I asked him to let me see the envelope. I asked Crumpton and he handed it to me, and when he handed it to me the address side was torn off; he claimed that the children some way had got a hold of it so you could not see any address side on it.

Q. Where did the letter purport to be sent from?

A. From the Pawnee Agency, I believe.

Q. Do you remember anything that was in it?

A. I remember one thing; he wanted to know how his spotted horse was getting along.

Q. That is the one he got from you?

A. Yes, sir.

Q. What became of the letter?

A. Burt read it and handed it back to him.

Q. Do you remember how long that was after Morgan was missing?

A. No, sir.

Q. The address side of the envelope was torn off so you could not tell anything about where it came from from the envelope?

114 A. No, sir.

Q. The defendant claimed that it was from Sam Morgan and that the children had torn the envelope?

A. Yes, sir.

Q. The letter itself purported to come from the Pawnee Agency; where is that?

A. Out west, somewheres.

Q. Do you know how far from where you lived?

A. No, sir; I don't.

Q. It is away out on the strip, isn't it?

A. I don't know where it is, it is out there somewhere.

Q. Did you see this letter at all to read it?

A. No, sir; I never read it.

Q. Did you know the handwriting?

A. No, sir.

Q. You didn't notice whether it was Morgan's handwriting or not?

A. No, sir.

Q. Burt is the man who read the letter?

A. Yes, sir.

Q. Did you see the body?

A. Yes, sir; found it up there at the hole in Mr. Lowry's field.

Q. Were you there when his pockets were examined?

A. Part of them. There was some letters taken out of his vest pocket.

Q. Was that before or after Mr. Edmiston came?

A. Afterwards.

Q. Were you there before or after Mr. Edmiston came?

A. Afterwards; he was there when I got there; I think they hadn't got his pockets all searched.

Q. You were not there when he was taken up?

A. No, sir.

Q. Do you know whether his hip pockets were examined or not of his pants?

A. Yes, sir; Mr. Dykes examined them. I believe there was a lead pencil taken from his hip pocket and a glove; I won't be positive about the hip pocket, but there was a glove.

115 Q. Was there any money taken from the body of the man?

A. Not that I remember of or know of.

Q. About how long after Morgan was missing was it that the defendant come to the field where you and Burt were and claimed he had a letter from Morgan?

A. I don't remember; about three weeks, though, I guess.

Cross-examination:

Col. CRAVENS. Where was it you saw Bood and Morgan together, where were you when you saw them?

A. I was at home.

Q. You were not down at Vann's or Harnage's?

A. No, sir; I was at home.

Q. How near were you to them?

A. Oh, I don't know, 100 yards, I reckon, or such a matter.

Q. You were at your house, were you?
A. Yes, sir.
Q. Right at the house?
A. Right close to it, 4 or 5 steps to it.
Q. Between the house and the road or back of the house?
A. Back of the house, at the end of the house, where I could see up the road on up that way.
Q. That road is in the timber isn't it?
A. Yes, sir.
Q. Timber between the house and the road?
A. Yes, sir.
Q. Did you see them over the tops of the trees?
A. No, sir; the timber wasn't so thick but what I could see.
Q. You looked around and twisted about between the trees and saw them?
A. No, sir; I didn't twist about.
Q. Your eyes are not crooked, are they?
A. I don't know about that.
Q. Are not the trees pretty thick there?
116 A. Tolerable thick; the undergrowth was all cut out; it was clear. There was trees there, but they wasn't so thick but what I could see.
Q. You could by looking around the trees?
A. Of course, I could not see them through a tree.
Q. Were they riding or walking?
A. Riding.
Q. What gait were they going?
A. I would call it a lope; riding pretty fast.
Q. Which was in front?
A. I don't remember about that.
Q. Maybe they were side and side?
A. Maybe they were; I don't remember whether there was one in front and one behind or not, or not, or whether they were side and side. I don't remember about it.
Q. What was Bood riding?
A. He was riding a horse; they were riding a gray horse and a spotted horse, but I don't know which was riding the gray horse or which the spotted horse.
Q. How do you know it was Bood and Morgan?
A. Because I seen them.
Q. If you seen them well enough to tell one was Bood and one was Morgan why could you not tell them well enough to tell which was on the gray horse and which was on the spotted?
A. I could.
Q. Why didn't you?
A. I did.
Q. How was it?
A. I don't remember.
Q. You have forgotten that, have you?
A. Yes, sir.
Q. You were sitting down on the ground cracking walnuts, were you?

A. No, sir; I was sitting on a board pile.

Q. You didn't have anything but walnuts?

Col. CLAYTON. What? To crack? [Laughter.]

Col. CRAVENS. Yes, sir (to witness). How long had you been
117 out there cracking walnuts?

A. I don't remember; I hadn't been out there very long, I don't reckon.

Q. When had you see' Mr. Morgan before that?

A. I seen him on Saturday evening before at my house, at the place where I was.

Q. Was Burt there at that time?

A. Yes, sir; he and Burt were together, and as he and Burt went off together, he came over there after Burt.

Q. When did Burt come back that evening?

A. About dark, I guess.

Q. Where did he go to?

A. I don't know where they went; they went to Hoyt's, I reckon. Sam said he had to go over there.

Q. How long did you and Burt stay there cracking walnuts?

A. I don't remember; we didn't stay there very long.

Q. What did you do next?

A. We went in the house; Bob Morgan got there.

Q. Then what did you do; did him and Burt go off together?

A. No, sir.

Q. What did you do out there?

A. We just were around about the place talking there with one another.

Q. Did you stay there all day?

A. Yes, sir.

Q. All three of you?

A. No; Bob went over to Vann's, Bob Morgan did. Storms came over there riding a pony, and he wanted Morgan to try his pony and Morgan got on the pony and went over to Vann's, said he was going there.

Q. How long was he gone?

A. Gone an hour or so, I reckon.

Q. What time in the morning was it he went over to Vann's?

A. Before 12 o'clock, before we eat dinner.

Q. How long after Sam Morgan and Bood passed was it that Bob Morgan came up to where you and Burt were cracking walnuts?

118 A. I don't remember how long it was; he might have been there; I don't remember whether he was there or not. He might have been there when they passed.

Q. You said awhile ago he came up afterwards?

A. Maybe he did and maybe he didn't; I don't remember how about that.

Q. If he was there he didn't come up afterwards, did he?

A. No, sir.

Q. Then if you said awhile ago he came up afterwards that was not right, so far as you recollect it now?

A. No, sir; he might have been there at the time; I don't recollect.

Q. How far did Bob live from there?

A. He lived three-quarters, I reckon, of a mile.

Q. Did Bob eat dinner there with you that day?

A. Yes, sir.
Q. Did his wife eat dinner there?
A. Yes, sir.
Q. Is he any kin to you?
A. Yes, sir; cousin.
Q. By marriage or how?
A. I am kin to him.
Q. You and Bob went to Muskogee to get out an attachment for Sam's property, did you?
A. He got it up, I reckon; I went with him up there. He was the man that got the stock.
Q. Wasn't the suit brought in your name for your debts? Didn't Sam owe you $100.00?
A. Yes, sir.
Q. Did you not bring suit for that?
A. No, sir.
Q. Bob is the only one who brought suit?
A. Yes, sir.
Q. Did Sam and Bood speak to you when they passed you there?
A. No, sir.
Q. You didn't speak to them?
A. No, sir.
Q. When was it you next saw Bood?
A. Monday morning at Hoyt's.
Q. Had he staid all night at Hoyt's the night before?
A. I don't know whether he did or not.
Q. What time did you find him there?
119 A. It was tolerable early in the morning. I don't remember just what time.
Q. Was it after day or before?
A. After sunup.
Q. After breakfast or before?
A. After breakfast with me; I never ask him whether he had been to breakfast or not.

Redirect examination:

Col. CLAYTON. You got your spotted horse; after it was learned that Sam was dead, Mr. Bob Morgan turned him over to you?
A. Yes, sir.
Q. That paid Sam Morgan's debt to you?
A. Yes, sir.

Recross-examination:

Mr. WOLFENBERGER. Did Mr. Morgan give a bond when he went up to Muskogee to get up that attachment up there?
A. I don't know; I suppose he did. I don't know how men can get them out without it.
Q. Did you go on his bond to get out that attachment?
A. I don't know whether you would call me going on the bond or not.
Q. Did you sign any paper up there?
A. Yes, sir; I signed a bill of sale for a mule to Dr. Harris to go on the bond.

Redirect examination:

Col. CLAYTON. You signed a bill of sale to Dr. Harris and he went on the bond?

A. Yes, sir.

Q. That is the reason you say you don't know whether you would call it going on the bond or not?

A. Yes, sir.

Q. You made the bill of sale to him for him to go on the bond?

A. Yes, sir.

Re-cross examination:

Mr. WOLFENBERGER. You give up that mule in order to get
120 your horse back. You gave a bill of sale for the mule and let an attachment run on his cotton crop and you and him was to divide the proceeds to pay your debts due you?

A. Yes; sir.

Redirect examination:

Col. CLAYTON. Is there any other relation of Morgan's in that country except you and Bob Morgan?

A. Burt was.

Q. What relation was Burt?

A. He was a cousin.

W. A. BURT.

Col. CLAYTON. Where do you live?

A. Blue Ridge, Texas.

Q. At the time that Sam Morgan is said to have been killed where did you live?

A. I had just come to Colquet's house in the Indian Territory; I was just stopping there.

Q. How long had you been stopping at Colquet's?

A. I staid there in all about 2 months.

Q. How long did you stay there before Morgan is said to have been killed?

A. I staid there one night; Saturday night.

Q. Where did you come from?

A. Charl'ston, Franklin County, this State.

Q. Had you lived in Charleston?

A. Yes, sir.

Q. How long did you live there?

A. Lived there all my life?

Q. Did you know a woman named Emma Toloson?

A. Yes, sir.

Q. Where does she live?

A. She lives in the Cherokee Nation now.

Q. Where did she live at that time?

A. She lived at her father's in Franklin County, about 5 or 6 miles from Charleston.

Q. Do you know whether Sam Morgan was acquainted with her?

A. Yes, sir; he was acquainted with her.

121 Q. Do you know whether he was paying any attention to her?
A. No, sir; I do not.
Q. Are you any relation to Colquet?
A. Yes, sir; cousin.
Q. Did you say you were there the day that Morgan is supposed to have been killed?
A. Yes, sir.
Q. Did you see Morgan that day?
A. Yes, sir.
Q. Where did you see him?
A. I saw him pass Colquet's house with Bood Crumpton. They were going towards Muskogee on horseback. They were riding a gray and a spotted horse, but I didn't notice which was riding the gray and which the spotted horse.
Q. Did you ever see anything more of Morgan after that?
A. Not without I saw his body. I never saw him alive. I saw the defendant on Monday or Tuesday, I don't remember which, now. I saw him twice; I first saw him at Hoyt's, and I might have seen him soon after that in the cotton patch.
Q. I will ask you if, some time after that, you saw him with a letter?
A. Yes, sir; about a month after that he came in the field where Colquet and I were with a letter. We were in the field picking cotton. He said he had got a letter from Sam and said he couldn't make it all out and I read the letter. I remember a little of it. I remember of him asking in the letter how he was getting along with his crop, and supposed he had it about all out, and asked him how his horse was getting along, and told him to turn the gray horse over to Bob Morgan, and said that Lena Thompson said for Grider to come out there and get a lease; that is all I remember. The letter purported to be written at the Pawnee Agency.
122 He didn't have but half of the envelope. He didn't have the side that is always stamped that the address is on. Colquet called for the envelope and he said the children had torn it or burned it. I gave the letter back to him.
Q. What was the signature to that letter?
A. S. M. Morgan.
Q. Did you know Morgan's handwriting?
A. No sir; I didn't know his handwriting; I hadn't been with him for a good while.
Q. Did the defendant ever tell you anything about as to what become of Morgan?
A. Yes, sir; he said when he got out on the edge of the prairie, or just before he got out there, he made the remark to him that if he saw his Arkansas man he would go west; that is, Morgan made that remark to the defendant. He said he saw him coming in a buggy and he came up and Morgan got in the buggy and went off, and told the defendant to take care of his stock. I don't remember just when it was I had this conversation with the defendant; it was a week or two after Morgan was gone.
Q. Did the defendant say anything to you about a man named Keyes?
A. No, sir.
Q. I believe you arrested him, did you not?

A. Yes, sir; I believe I arrested him on the 27th day of December. That was after the body was found. I found the defendant near Garfield, in the Cherokee Nation, and that is about 20 or 25 miles from where the body was found.

Q. Did he make any statement to you at that time as to what had become of Morgan?

A. Yes, sir. He said he was innocent and he believed he would prove himself out of it.

Q. Did he say anything to you in that conversation about Keyes?

A. Yes, sir; he said when he got opposite Joe Harris' house—

123 opposite his field, rather—he met this fellow in the buggy, and a fellow named Keyes, and he said that Morgan and Keyes and this fellow in the buggy went off after whiskey, and he set down in the fence corner to wait for them to come back, and he said after a while Keyes came back with the two horses and told him to take them and do what he did do. He said the name of the man in the buggy was Landrum or Langdon, I don't remember which.

Q. Do you know where Joe Harris' field is?

A. No, sir.

Q. Mr. Lowry has located Joe Harris' field near the white church. You say that he said he met this man in the buggy and that Keyes was with him?

Col. CRAVENS. He didn't say that?

Col. CLAYTON (to witness). What was it you said about Keyes?

A. I have said that he met this fellow in the buggy and Keyes.

Q. Keyes was with him?

A. I said that he said that he met this man and Keyes; I suppose they were together.

Q. In the first conversation you had with him did he say anything to you about Lena Thompson, in the first conversation he had with you, or either of them, any time before you arrested him?

A. No, sir.

Q. Did he say anything about Lena Thompson being missing?

A. Yes, sir; after that he said that he believed that Sam went off with Lena Thompson—that Morgan went off with Lena Thompson, or that Lena Thompson went off with these two men, Morgan and the man that was in the buggy. He said he was missing and he believed she went off with him.

Q. Which one of the Keyes did he say it was?

A. Bill Keyes.

124 Q. He is here, is he not?

A. Yes, sir.

Q. Did he say what Keyes told him Morgan said for him to do with the horses?

A. No, sir, he said to do as he had done with them.

Q. Now, then, after you had made the arrest and had the talk with him, did he say anything to you about the letter he had brought to the field and showed to you?

A. Yes, sir; he made the remark that Keyes must have written the letter. This was after I arrested him. I asked him for the letter and he said "we lost it," or "we lost it as we went to Bragg's Station."

Q. Look at this pistol. (Handing witness pistol which has been introduced in evidence.) Did you ever see that pistol before?

A. Yes, sir; I first saw it up in the Nation. I got it from Jim Lowry; I don't know whether that is the first time I ever saw it, but that is when I got it. I don't know how Jim Lowry got it. I wasn't present when he got it. I never seen the defendant have it in his possession. I got this pistol from Jim Lowry, and got it somewheres about the first of January, and I brought the pistol here.

Q. Jim Lowry is not here?

A. No, sir.

Q. When you arrested the defendant please state if he had an overcoat?

A. Yes, sir.

Q. Do you know what became of that overcoat?

A. I think Mr. Bob Morgan had it. I turned it over to him. I supposed it to be Sam Morgan's and I turned it over to Bob Morgan. Bob claimed it as Sam Morgan's. I don't know of my own knowledge whose it was. I got the overcoat at the house when I arrested him. I don't know whether I got in the house or not; I think, though, I did.

125 When we started off he didn't have his coat or his overcoat or vest, and we started off and he said they were back there and we told him we would go back and get them, and he said "let them go," and I told him he must have them, and I went back and got them. This was at Smith's house, about 25 miles from the place of the killing.

Q. Do you know how long he had been there?

A. He had been there day or two, a day and a half; that is what he said; I don't know.

Q. How come you to learn he was there?

A. As we came on down to Ft. Smith we brought descriptions along and gave them to officers at these little towns, and we happened to give one to this fellow Smith, and he knew Crumpton, but he never said anything to him about the description; he came back to Bragg and met us there.

Q. Where had the defendant been living just before he went there?

A. At Black Hoyt's, I think. I don't know when he left Black Hoyt's.

Q. I believe you swore out the writ?

A. Yes, sir.

Q. Who came down here with you?

A. Didn't any one come to Ft. Smith with me; Robinson was with me, but he stopped in Van Buren. I came over here and got the writ.

Cross-examination:

Col. CRAVENS. Where do you live now?

A. In Texas.

Q. How long since you left Texas?

A. I left there the 10th day of this month.

Q. Where have you been living since the arrest of Bood Crumpton?

A. In Texas part of the time.

Q. Where the remainder of the time?

A. Here in Ft. Smith.

126 Q. What are you doing in Fort Smith?

A. I don't do anything.

Q. How long did you live here?

A. I staid here about two weeks after I came down here before the grand jury before I went to Texas.

Q. Had you lived in Texas before Morgan disappeared?

A. No, sir.

Q. Where had you been living before that?

A. Living down here at Charleston, Franklin County.

Q. It seems that at the time that Morgan disappeared you were up in the Indian country.

A. Yes, sir; it seems that way.

Q. It seems that way from your own statement?

A. Yes, sir.

Q. How long had you been up there?

A. Been up there a little over a day; I got there on Friday evening, and Sunday he disappeared.

Q. Where did you come from?

A. I went from Charleston.

Q. What did you go up there for?

A. I went up there to work.

Q. Who did you go up there to work for?

A. I couldn't tell you.

Q. What kind of work?

A. Picking cotton.

Q. Had you ever been up there before?

A. No, sir.

Q. Had you ever met with Morgan before?

A. Yes, sir; I met with him in Charleston. He lived at Charleston. He lived there a year or two; I couldn't tell you exactly how long.

Q. Had you ever lived in Texas before?

A. No, sir.

Q. When did you go to Blue Ridge, Texas?

A. About the first of this last March.

Q. Well, now, up to that time since the disappearance of Morgan, where had you been?

A. In the Nation and here.

Q. You have been here two weeks, you say?

A. I have been here longer than that.

Q. When were you here?

127 A. I was here before the commissioner and here before the grand jury. I staid here two weeks after I was here before the grand jury.

Q. What were you doing here?

A. I wasn't doing anything; I was waiting for school to commence at Fayetteville.

Q. Did you go to school at Fayetteville?

A. No, sir.

Q. You turned around and went to Texas?

A. Yes, sir.

Q. You had never been to Texas before, you say?

A. No, sir.

Q. You and Sam Morgan were not very friendly, were you?

A. I thought we was. If there was anything wrong I didn't know it, sir. I never heard of it.

Q. You came on Friday you say?

A. Yes, sir.

Q. When did you see Sam after you got there?

A. I saw him Saturday evening.

Q. Where did you stop when you went up there?

A. I stopped at Bob Morgan's until Friday night.

Q. Where did you stay Saturday night?

A. At Colquet's.

Q. Are you related to Colquet?

A. Yes, sir; I am his cousin.

Q. Where did you stay Sunday night?

A. I don't know; I stayed at Colquet's or Morgan's, one, I don't know which.

Q. Can you not tell which?

A. I don't believe I can now.

Q. How long had it been since you had seen Sam before you went up there; when had you seen him last before that?

A. I don't know how long it had been; it had been two or three years.

Q. How long were you with him on Saturday evening when you met with him?

A. I was with him about an hour.

Q. Where were you?

A. We was at Hoyt's field and at Hoyt's.

Q. What was he doing in there?

128 A. He had hands in there picking cotton.

Q. What was he doing?

A. He wasn't doing anything only talking to me. I went to Mrs. Harris' that day and looked for him; he hadn't got back yet when I went to Mrs. Harris', and Mrs. Harris told him I had been there and he came to Colquet's after me, and I went with him to Hoyt's, and I stayed with him about an hour, I reckon, I don't know how long it was.

Q. How did you get back to Colquet's—you say you staid there Saturday night?

A. I walked back.

Q. Sam didn't take you back up there?

A. No, sir.

Q. He came after you and brought you a horse to ride down and let you walk back?

A. Yes, sir.

Q. Did you speak to him when you saw him Sunday?

A. No, sir; I didn't have time.

Q. How near was he to you?

A. About 100 yards; he went by there in a lope.

Q. You didn't holler to him to stop, ask him to stop?

A. No, sir.

Q. When did you next see Bood Crumpton after that?

A. I don't know, sir; it wasn't long, though.

Q. When was it you had that conversation with Bood Crumpton, the defendant, about going to the edge of the prairie and meeting this fellow?

A. I don't know.

Q. You *a*hve not any idea?

A. No, sir.

Q. It was sometime floating around in space?

A. Yes, sir; sometime floating around in space, sometime near a month after Morgan disappeared, I don't know how long; I would guess about two weeks.

Q. Was that the first time you met with him since that Sunday?

129 A. No, sir; I don't think it was.

Q. Did you ever meet with Bood Crumpton before?

A. No, sir.

Q. Did you see him on Saturday?

A. Yes, sir; I saw him in the cotton patch picking cotton, in Sam Morgan's cotton patch.

Q. Were you introduced to him?

A. No, sir.

Q. Did you have any conversation with him?

A. I might have said a few words with him. He told me to shoot that thing. Something jumped up and run through the weeds and he told me to shoot it. We was talking about the cotton; the cotton was tangled up right smartly, and they couldn't pick much, and he said what was there.

Q. What kind of a hat did he have on?

A. I don't know, sir.

Q. Did he have on a hat Sunday morning when you saw him?

A. I suppose he did.

Q. Did he have on a coat?

A. I suppose so—I don't know whether he did or not.

Q. If you did not speak to him or didn't know what kind of a hat he had on, and don't know whether he had a coat on or not, how can you tell that *the* was the man loping off 100 yards from you in the timber, how can you tell that was Bood Crumpton?

A. I can tell by his face.

Q. You saw his face 100 yards off, did you?

A. Yes, sir.

Q. What part of his face did you see?

A. I don't know, sir, what part. I think they looked towards the house. I think when they turned the corner they looked towards the house.

Q. What were you doing there at that time?

A. I think I was eating walnuts.

Q. Cracking them or eating them whole?

130 A. You can just take it any way you like, I don't care.

Q. Were you setting down or standing up?

A. I don't know; I wasn't lying down, I don't think. I don't know whether I was setting down or standing up.

Q. Were you in the yard or in the field or in the lot?

A. I was in the woods, because the house was in the woods. I wasn't in the field or lot, either one.

Q. Wasn't there a fence around the house?

A. No, sir.

Q. At the corner, where you spoke about them turning, how far is that from the house?

A. Somewhere about from 70 to 75 or 100 yards.

Q. Were you setting with your faces in that direction or sideways in that direction?

A. I don't know, sir; I didn't say I was setting down at all.

Q. Have you any idea or recollection of which way you were facing at the time when they were going up there with their faces towards you?

A. I don't know; but I looked towards them. I don't know what position I was in.

Q. Was there anything said between you and Colquet at that time about them?

A. Not that I remember of. There might have been something said, but I don't remember what it was. I think we was wondering where they were going, or something like that, riding so fast; we talked something about them.

Q. Where did you remain from that time on until the body was found; where were you when the body was found?

A. I was at Colquet's.

Q. Had you been there all the time?

A. Yes, sir. I was picking cotton; I helped to pick Morgan's
131 crop, part of it, and I picked some for another man.

Q. Picked cotton up to the 24th of December?

A. No, sir; I don't think I was picking that day. I don't remember how long I did pick cotton.

Q. Are you related to Sam Morgan?

A. Yes, sir; cousin. I first got acquainted with him at Charleston, our home. I never knew him in Georgia. I became acquainted with him in 1884 or 1885, I believe.

Q. Do you not know he was in the insane asylum in 1884, put in there in 1884 and remained in some time until in 1885?

A. No, sir; I don't.

Q. Did you ever hear of it?

A. Yes, sir; perhaps it was in 1886 when he came there; I don't remember the exact date. I don't know what year it was.

Q. When Bood Crumpton came with a letter to you to read did you take the letter and examine it and read it?

A. I read it, sir; I had it in my hands and read it.

Q. How was it written, with pen or pencil?

A. It was written with a pencil, as well as I remember.

Q. Ordinary pencil, or one of these indelible pencils?

A. Ordinary pencil, if it was written by a pencil; I don't remember; I am not positive it was written by a pencil, but I think it was.

Q. What kind of handwriting was it; was it plain or difficult to read?

A. It wasn't very difficult to read; it was tolerable easily read.

Q. Were the letters pretty well formed and easily distinguished?

A. I don't know whether I am a judge or not.

Q. According to your best judgment; you have been to school,
132 have you not?

A. A little; yes, sir.

Q. You can read?

A. Yes, sir.
Q. According to your judgment, were the letters well formed?
A. It wasn't; no, sir.
Q. They were plain, were they?
A. They were plain enough that I could read it.
Q. Were they in what you would call a plain handwriting?
A. Yes, sir; it was tolerable plain.
Q. Were the letters large or small?
A. They were ordinary letters.
Q. Ordinary sized letters, were they?
A. I suppose they were.
Q. How was the spelling?
A. The spelling was tolerable good, I believe. I never paid any attention to the spelling.
Q. Do you remember any misspelled words?
A. No, sir; I don't.
Q. As far as you know the spelling was correct?
A. Yes, sir.
Q. It was a plain, legible handwriting?
A. Yes, sir; it was legible.
Q. Was Bob Morgan there at the time you read the letter?
A. No, sir.
Q. Where was he?
A. I don't know.
Q. Bood told you at one time, you say, that when he went out towards the edge of the prairie that Sam said if he met his Arkansas man—or Arkansas friend, which was the exact language?
A. I don't know the exact word, but something like that. He said, as well as I remember, if he saw his Arkansas man that day he would go west, or go to the Pawnee Agency, I don't know which he said. He said he got to the edge of the prairie and he saw him.
Q. Did he tell you what time he saw him?
A. No, sir.
133 Q. Did he tell you where he went that day?
A. No, sir.
Q. He told you he went on out to the edge of the prairie, and they met the men spoken of, and Sam Morgan went on with him?
A. Yes, sir.
Q. Did not tell you where he went to or what he did?
A. No, sir.
Q. Did not go into a very detailed account of the doings of the day?
A. No, sir.
Q. Afterwards, when you arrested him, he told you that they went out on the edge of the prairie that day near Harris' field, I believe you said. Did he mention the field?
A. Yes, sir.
Q. Near Joe Harris' field, and he met that man called Landrum in a carriage or buggy?
A. Yes, sir.
Q. Keyes was with him?
A. Yes, sir.

Q. And Morgan and the other two went off together and he staid there?

A. Yes, sir; and Keyes came back and brought the horses.

Q. And told him where Sam was gone?

A. I suppose he did.

Q. That is what he said, isn't it?

A. Yes, sir.

Q. The first conversation he didn't go into the details of it at all?

A. No, sir; that is about his own doings.

Q. You have never seen Crumpton except in the cotton patch before this morning. You saw him Saturday evening in the cotton field. Were there other hands in the cotton field at that time?

A. One or two, I think; a fellow named Bean.

Q. Do you know whether Morgan paid any hands for picking cotton Saturday evening; did he weigh the cotton Saturday evening?

A. Yes, sir.

Q. Did he pay them for picking?

A. No, sir; I don't think he paid any one. He brought Bean
134 some money and Bean would not have it.

Q. Don't you know he borrowed some money that evening from Black Hoyt?

A. No, sir.

Q. Did you not see Black Hoyt that evening?

A. I might have seen him.

Q. This cotton picking was on Hoyt's place, was it not?

A. Yes, sir. I don't think I saw Hoyt that evening when I was with Sam Morgan.

Q. If Black Hoyt did loan Sam Morgan two dollars to pay cotton pickers with that evening, it was when you were away from him?

A. Yes, sir; I suppose it was. I staid down there and picked until it was nearly dark.

Q. Where was he when you left him?

A. At Black Hoyt's fence.

Q. What had become of the other cotton-pickers?

A. They had gone.

Q. Sam might have paid the cotton-pickers, might he not?

A. He might have done it; if he did I didn't see him; I was with him all the time. I was with him when he weighed the cotton.

Q. You say he didn't pay anything to Bean?

A. No, sir; Bean wouldn't take it. Sam said to him "I have borrowed some for you, anyway; I thought you needed it," and Bean told him he wasn't as hard up now as he thought he was.

Q. You did not see him offer Bood any?

A. No, sir.

(Jury take a recess.)

135 Q. You never saw the defendant write, did you?

A. Yes, sir.

Q. Where?

A. No, sir; I didn't see him write, either. I will take that back. He commenced to write a note after he was in jail, the U. S. jail, to write me

an order for that pistol, and he wrote a word or two, he and said the card wasn't any good or he couldn't write on it and he went and got paper and wrote out of my sight.

Q. Have you got that?

A. No, sir; I don't think I have.

Q. About 10 o'clock, you say, on Sunday morning, you saw those parties passed there?

A. I think it was 10 or 11.

Q. You said while ago you thought it was about 2 weeks after the disappearance of Morgan until the letter was brought by the defendant in the cotton patch?

A. No, sir; I didn't say it. I think I said about a month. I didn't aim to, if I did.

Q. You say, then, you think it was about a month after the disappearance before you saw this?

A. Yes, sir.

Q. When was it he brought the letter?

A. Somewheres in November, I think.

Q. About what part of November?

A. Right at the last, or first of December, I don't know which.

Q. You don't know whose handwriting it was in?

A. No, sir.

136 Q. Was that the first you saw of Crumpton, when he came with that letter?

A. No, sir; I don't think it was.

Q. When did you see him. How long after the disappearance of Morgan before you had a conversation with him?

A. I think about 2 weeks.

Q. Maybe that is what you were referring to before. He never had but one conversation in telling you about Sam Morgan going off before he was arrested, did he?

A. No, sir; I don't think he did, and hee didn't have that directly to me.

Q. He only talked twice, once before he was arrested, in reference to Sam's going off, and then after they arrested him he made a statement?

A. We talked several times. We didn't talk about that every time.

Q. I understood you to say you only had two conversations with him in which he stated about Sam's going off?

A. I think that is correct.

Q. I don't suppose it was necessary for him to be telling you every time, do you?

A. No, sir; I didn't ask myself; he didn't talk directly to me; I heard him say it.

Q. (Reading) "On December first, 1889, defendant brought a letter in the cotton patch. He said it was a letter from Sam Morgan. He handed it to me to read. I don't remember the date of it. The letter was signed S. M. Morgan. I don't know whose handwriting it was. In a day or two after this defendant told me deceased had got in a buggy with a man he thought deceased got acquainted with in Arkansas, and he believed Lena Thompson went with them in the buggy, as she was missing." You stated here before the commissioner that this letter was read to you

on the first of December, and it was a day or two after that that he
137 came to you, and told you about the way Sam had gone off.

A. Does it say that Bood came to me and told me that?

Q. Yes, sir; it is the conversation you now say was two weeks after the deceased disappeared. You said positively while ago it was 'efore reading the letter.

A. Well, I think it was.

Q. What is your recollection now?

A. I don't know, but then I think that must be correct, because it was fresher on my memory than it is now.

Q. Did he say anything about Lena Thompson when he talked to you about Sam's going off?

A. I think that he did—no, sir; he didn't say anything to me directly.

Q. You say here that he did?

A. Well, he told me as much as he did the crowd. There was several of us there.

Q. Who were they?

A. I don't remember. There was two persons there that hauled cotton off.

Q. You went to the place where the body was found?

A. Yes, sir.

Q. When?

A. On Tuesday.

Q. How soon after the boys found him?

A. It was said to be found on Sunday.

Q. And you did not get there until Tuesday?

A. No, sir.

Q. Who went with you?

A. Bob Morgan and Colquitt.

Q. You got there what time on Tuesday?

A. It was in the morning sometime, perhaps 10 o'clock.

Q. Was the body taken out of the hole when you got there?

A. Yes, sir.

Q. You say that is the pistol you took from Jim Lowry?

A. Yes, sir.

Q. You said before the commissioner you got the pistol from Blackdog; was that his name?

A. Yes, sir; Blackdog Jim Lowry.

138 Q. How did you get it from him?

A. I bought it.

Q. You did not have a pistol before?

A. No, sir.

Q. When did you buy it from Jim?

A. I brought it down before the commissioner; I don't remember; I think, though, I had bought it then; I think I bought it after I went back.

Q. You had it before the commissioner?

A. Yes, sir.

Q. How did you get it, then?

A. I borrowed it from him.

Q. Didn't you have the pistol when you borrowed it from him?

A. Yes, sir; but it wasn't my own.

Q. Did you turn it over to Bob Morgan?

A. No, sir; I turned it over to Blackdog Jim Lowry; I just changed with him and got Sam Morgan's.

Q. You don't know whether it was Sam Morgan's or not? You don't know whose pistol that is, do you?

A. Yes, sir; it is mine.

Q. You claim you got it from Blackdog Jim Lowry?

A. I did.

Q. What did you give him for it?

A. $7.00.

Q. You didn't swap for it, then?

A. No, sir.

Q. (Reading). "While I had the defendant under arrest defendant made a statement." Who was present when that statement was made?

A. Robertson, or Robinson.

Q. Was he an officer?

A. No, sir; I don't think he was.

Q. Where was the statement made?

A. When we were going from Garfield to Bragg's Station.

Q. How did you travel that far?

A. Horseback.

Q. Was the defendant riding too?

A. Yes, sir; he was riding the same horse Robisn'on was riding.

Q. Where is Robinson?

A. I think in the Cherokee Nation.

Q. Was that statement made to you or Robinson?

A. Well, to both of us.

139 Q. (Reading). "When defendant and deceased got to Joe Harris' field Bill Keyes and this man in the buggy came up; that they all went off after the whiskey and he sat down in a fence corner to wait until they came back; that Keyes came back with the two horses and turned them over to him." Now, what direction did Keyes give him?

A. I think I asked him if Keyes told him all this or not, and he said he did. He told him to turn one over to Burris and pay Black Hoyt $2.00, and Grider $7.00, and Harris $20.00.

Q. Grider $5.00, you stated before the commissioner.

A. Well, I think it was $7.00.

Q. (Reading). "Keyes came back with the two horses and turned them over to him, and told him to leave one at Burris' and pay Harris $20.00, and Grider $5.00, and Black Hoyt $2.00. Do not remember his saying anything about the gray horse; that Keyes told him to take care of the cotton crop. Keyes brought these messages to Deft, so Deft told me. Deft also said that Keyes told him that deceased had gone off to the Pawnee Agency with a man who Keyes said was named Landrum. The letter I seen was dated at Pawnee Agency. He said in the letter that he also writes to Bob Deft; said that Keyes must have written the letter that he brought to me in the field." Now, this was after the arrest that statement was made, was it; that is, that Keyes must have written the letter?

A. Yes, sir.

Q. And this I have been reading to you?

A. Yes, sir.

Q. That was after the arrest. You didn't say anything before the commissioner about the defendant telling that Sam Morgan said before he got to the edge of the prairie if he saw his Arkansas friend he would go west that day. You ommitted to tell that. Why is that?

A. I don't know why.

Q. You can't give any reason. When he was telling you that
140 you believed what he said?

A. Yes, sir.

A. Yes, sir.

Q. And I presume it was a matter that didn't interest you at that time?

A. Not very much.

Q. And you supposed Morgan would be back shortly?

A. Yes, sir; of course. I didn't pay any particular attention to what the boy was saying; I didn't write it down or anything of that kind.

Q. But after the arrest, and he was giving an account of his last meeting and parting with Morgan, you paid closer attention than you did the first time, because there wasn't anything to attract your attention the first time; that is true?

A. I guess so.

Q. You say you live at Blue Ridge, Texas?

A. Yes, sir; Collin County.

Q. What are you doing down there?

A. Working in a saloon.

Q. Do you own the saloon?

A. No, sir; got no interest in it.

Q. Whose saloon?

A. St. Clare's.

Q. How long have you been working in the saloon?

A. A little over a month.

Q. You work here as a deputy marshal, or posse, or guard, don't you?

A. No, sir. I had a commission when I went after Crumpton; that is all.

Q. What salary do you receive in that saloon?

A. About $20.00 per month.

Q. And board yourself, and what you can drink; is that right?

A. No, sir.

Q. You have not been doing anything since you quit that cotton field?

A. No, sir.

Q. Did you have any money when you went up there?
141 A. No, sir; I don't think I had much.

Q. Did you have any?

A. I don't think I did.

Redirect examination:

Col. CLAYTON. Have you not been clearing up fields since then?

A. I did afte' I quit picking cotton.

Q. Why don't you say so?

A. While I was picking cotton I was clearing too.

Q. You say that the defendant commenced to write an order for this pistol in jail?

A. Yes, sir.

Q. How came he to do that?

A. Well, I didn't know whether I could get it or not from Blackdog Lowry without an order from him.

Q. Why did you want to get an order from him?

A. Why, it was supposed to be his; he pawned it and Lowry redeemed it, and went and taken it off the fellow's hands, and said when Crumpton wanted it he could have it.

Col. CRAVENS. I do not think that is evidence.

Col. CLAYTON. I think it is only evidence to show his motive, but I don't think it is evidence to show who the pistol belonged to. (To witness:) You say he started to write you an order?

A. Yes, sir.

Q. Did he say anything to you about the pistol when you saw him there?

A. No, sir.

Q. Did you not have any conversation at all?

A. Yes, sir; we had a conversation about the pistol. I went and asked him to give me an order to Lowry for the pistol. He said he would do it, but he didn't know whether he had it or not. I told him then to write the order and if he had it I would get it, and if he didn't all right.

Q. You say he started to write?

142 A. Yes, sir. I think I handed him a card, and he started to write; then he went back in where he stays and wrote in there, I reckon.

Q. Did he give you the order?

A. Yes, sir.

Q. Who did you take that order to?

A. Jim Lowry.

Q. Was it signed by Crumpton?

A. Yes, sir.

Q. Did he give it to you?

A. Yes, sir.

Q. What did you do with the order?

A. I think I have got the order in some of my papers.

Q. Did you give it to Lowry?

A. No, sir. Lowry said it was his; that Crumpton had nothing to do with it. He gave Crumpton 2 weeks to redeem it and he never redeemed it, and he would just keep it, and I bought it from him.

Q. Have you got that order down here?

A. I don't know.

Q. He actually did write you the order?

A. Yes, sir; I reckon he did.

Col. CRAVENS. You already had the pistol in your possession at that time?

A. Yes, sir, and I showed it to him.

Col. CLAYTON. You first got the pistol from Blackdog Lowry by trading another one?

A. Yes, sir; by exchanging.

Q. Why did you do that?

A. To bring it before the commissioner.

Q. You say he was an officer?

A. Yes, sir, of the Cherokee Nation.

Q. Then you just swapped for the time being; you let him have your pistol and he let you have his?

A. Yes, sir.

WILSON RIDER.

Col. CLAYTON. Where do you live?

A. Muscogee.

Col. CRAVENS. Aint you the same Rider who was tried in the Cherokee court and convicted and sent to prison up there?

A. Yes, sir.

143 Q. Convicted of larceny?

A. Yes, sir.

Q. And served a term in prison up there?

A. Yes, sir; I staid in about 2 months and the chief turned me out.

Col. CLAYTON. He pardoned you?

A. Yes, sir.

Col. CRAVENS. Have you got your pardon?

A. No, sir.

Q. How long were you sent for?

A. 18 months.

Q. And you got out in two?

A. Yes, sir.

Q. What were you charged with stealing?

A. Hog.

Q. How did you get out of jail?

A. Well, it was prejudice——

Q. How did you get out of jail?

A. The chief pardoned me out.

Q. You don't know whether you were pardoned or not?

A. Yes; they gave me the papers and I gave them to Charley Starr.

Q. How many times have you been tried up there?

A. Once.

Col. CLAYTON. Are you a Cherokee?

A. Yes, sir.

Q. Do you know this man over here, the defendant in this case?

A. No, sir.

Q. Do you know Bood Crumpton?

A. Yes, sir; I have seen him several times.

Q. Point him out. Do you know him when you see him?

A. Yes, sir.

Q. Where is he?

A. No; I don't see him in the house. I can't see very well with my one eye.

Q. If you were to get close to him do you think you would know him?

A. Yes, sir.

Q. Just get up and go and look among these 3 or 4 gentlemen [pointing to table at which defendant and his counsel are setting] and see if you know him.

A. (After searching about a minute, points to defendant and says)
144 I guess that is the man there; I have not saw him but a few times. I aint much acquainted with thr boy at all.

Q. Did you know Sam Morgan in his lifetime?

A. No, sir.

Q. Do you know a man by the name of Pete Maclemee?

A. Yes, sir.

Q. Did you pick any cotton for him last year?

A. No, sir.

Q. Did you have any talk with him about picking cotton?

A. No, sir; I didn't.

Q. Do you know a man by the name of Lawson?

A. Yes, sir.

Q. Did you have any talk with him about it?

A. Yes, sir.

Q. What was it?

A. He told me if me and my children would go over there——

Col. CRAVENS. I object to that.

Col. CLAYTON. Did you have any understanding with Lawson?

A. He told me if me and my children would go over there and help to pick cotton he would give us $1.00 a hundred pounds.

Q. Where did Lawson live?

A. Over to Mr. Syke's place; he has been dead a good while.

Q. Did he rent a farm from Pete Maclemee?

A. Yes, sir.

Q. State if you were over there.

A. Yes, sir; I went down in the bottom, in the field, where he had his cotton crop; Mr. Syke's field it used to be.

Q. How far is that from Muscogee?

A. I guess it is about 6 miles; it might be a little over that.

Q. How far was it from the Arkansas River?

A. I expect it must be over a mile something.

Q. Do you know where Coody Creek is?

A. Yes, sir.

Q. How far is it from Coody's Creek?

145 A. Right close from the field; some places it ain't more than 30 yards.

Q. Do you know where Lowry's field is, where this man was said to be found?

A. I seen the field; I never was inside.

Q. How far is Syke's field from that?

A. Close together.

Q. When was it you went over there, and what for?

A. Well, it was last fall; it was in November, I think, on Sunday.

Q. What did you go there for?

A. To look at the crop of cotton what Lawson was expecting me to help pick out.

Q. You went over on Sunday?

A. Yes, sir; to see if it was opened out enough for us to pick it out.

Q. When you got over there what did you do; did you go in the field?

A. Yes, sir; and was looking at the cotton crop.

Q. If you heard any shots upon that day, or saw anybody, I want you to tell all about it.

A. Well, I had just got in the field; I went about 50 yards, I reckon, right through the rows towards Mr. Lowry's field looking, and I heard a gun fire away down towards the River somewh'res; I heard somebody shoot twice down that way, and I reckon about an hour, maybe a little over that, I don't know, I seen that person there (pointing to the def't). He rode right along the side of the fence; I was inside of the fence yet; the weeds was high along the fence; I guess they call them horse weeds, they grow awful high in the river bottom.

Q. Was he on horseback or on foot?

A. Y's, sir.

Q. How many horses did he have?

A. Two; he was leading one and riding the other.

Q. Which way was he going?

A. Going towards the Muscogee road like——

Q. What road was he on?

A. He was in the road that goes down to Jim Lowry's field.

146 Q. (Showing map, and witness explains it.)

A. After you get a little piece farther the right hand road goes to Jim Davis', I guess they call him Jim. Then the left hand turns right back and goes over into White Squirrels'; it crosses Coody's Creek.

Q. Lawson hired you?

A. Yes, sir; the old man; I don't know his given name; I guess his son knows it.

Q. You say he was riding one horse and leading another?

A. Yes, sir.

Q. Did you see him after he got into the Muscogee road, or until he got to the Muscogee road? Could you see him that far?

A. No, sir; I never noticed him any more. I know it was him just passed right along the fence; he was in the road. That was a plain road; it starts from Lowry's field and goes to Muscogee.

Q. You never saw him any more?

A. No, sir; I never particular paid any attention to him at all.

Q. You say this was on Sunday, in November, you think?

A. Yes, sir; I think it was in November; it was on Sunday though. I thought we would go Monday morning to work, and I went down Sunday to see if it was opened out a heap so we could pick it; if it wasn't we wouldn't go down.

Cross-examination:

Col CRAVENS. Did you go on Monday back to the cotton?

A. No, sir; we didn't pick it at all.

Q. That is about 6 miles from Muscogee?

A. I guess about that.

Q. What time was it you saw the man ride by the field?

A. I guess it was about 2 o'clock, may be a little piece after; I didn't have no timepiece.

Q. Were you in the field?

A. Yes, sir.

Q. Where was your horse?

147 A. Away up the creek close to the ferry, a little over half a mile from where I was at.

Q. How many horses did you have up there?

A. Two.

Q. What did you have two for? Did it take 2 for you to ride?

A. No, sir; I had a wagon along; I thought I would pick up a little dry limbs and bring it back; we were plumb out of wood; I didn't have any axe along.

Q. You left the wagon where you crossed Coody's Creek?

A. Yes, sir.

Q. Above the ferry on the other side of the creek?

A. Yes, sir.

Q. How many times did you cross Coody's Creek?

A. Nary a time.

Q. You left the wagon and horse above the ferry?

A. Y's, sir; just a little piece above the ferry; I guess about 300 yards from the ferry.

Q. In the prairie was it?

A. No, sir; it is awful brushy.

Q. No road at all?

A. Yes; but outside the road it is brushy.

Q. Brushy close up to the road?

A. Just room enough for the wagon tracks; it is wide enough, plenty.

Q. What did you do with the horses?

A. Just tied them there among the saplings.

Q. You did not take them loose from the wagon?

A. Yes, sir; I did.

Q. It is about a mile from there down to the ferry?

A. Did I tell you it was about a mile?

Q. No; but I know it is?

A. I don't know how far it is.

Q. Ain't it a mile according to your judgment?

A. I guess so, or may be a little over.

Q. Who told you to come here and tell this tale?

A. Nobody.

Q. Tell the truth. You got into trouble once about hogs. Now, tell the truth?

148 A. I was down in bed sick when John West came to me; he said he had a subpœna for me. I said if I just said what little I knowed may be they would not want him. He said he hadn't nothing to do with it, if I didn't go I would have to pay $250.00 fine. I had just got out of bed when I came over here.

Q. You were in bed when he served the subpœna on you?

A. Yes, sir.

Q. When did he serve it on you?

A. I don't know, exactly.

Q. What month?

A. It was the month before this.

Q. You don't know the name of the month?

A. No, sir.

Q. What is the month after this one?
A. May, I reckon.
Q. What is the next one after May?
A. June, I guess.
Q. What is the next one after October?
A. November, I reckon.
Q. What comes after November?
A. December, I guess.
Q. In what month was it this subpœna was served on you?
A. It must have been in April, I said.
Q. How many weeks ago has it been?
A. I don't know.
Q. About how many?
A. It must be about five or six weeks ago.
Q. How soon did you go after you were subpœnaed?
A. Not very long; I guess it was over a week or two weeks.
Q. You were sick at the time, and that is a better reason for your knowing what month it was in; that ought to be as important as when you took the wagon out five miles from Muskogee and tied it in the bottom and walked the rest of the way; you ought to recollect the month which you were sick in to get $1.50 to come down here; that is more important than going to pick cotton for a dollar a day.
A. Yes, sir; I guess so.
Q. Why can you not remember?
A. I wasn't hiding; I was lying in bed sick.

Q. The other occasion was when you were hiding in the weeds
149 in that field?

A. I wasn't hiding; I was standing up.
Q. No, no; you were not. Did you see him over there?
A. I was just walking along; I stopped when I heard the horse's feet.
Q. You were not walking when you seen the man?
A. No, sir.
Q. How near did he get to you?
A. Just along the road.
Q. You say there were high horse weeds?
A. Yes, sir.
Q. Were the weeds thi*n*k inside?
A. Just along in the fence.
Q. How thi*n*k?
A. I couldn't say.
Q. How high?
A. High; great long horse weeds.
Q. They extended out in the field, didn't they?
A. No, sir; I reckon not.
Q. Could he have seen you?
A. Yes; if he looked.
Q. Did he look?
A. I don't know.
Q. How near did the man get to you?
A. I don't know; I guess it was 25 or 30 steps.
Q. Are you certain of that?

A. Maybe not hardly that far.

Q. What is your best impression about the distance he passed from you?

A. Well, that is what I think, 25 or 30 steps.

Q. And he was one side of the fence and you on the other?

A. He was going along right on the outside of the fence.

Q. The road was close to the fence?

A. Right along side of the fence; the road is pretty straight and I never seen him any more.

Q. Was it in the timber or prairie?

A. Timber.

Q. What did you say to him?

A. Nothing.

Q. What did he say to you?

A. Nothing to me.

Q. (Reading.) The date of the subpœna is the 25th of February,
150 1890, and the service is the 11th of April. Who served it on you?

A. John West.

Q. How long had you been in the field?

A. I hadn't been in a great while; just looking around; just went across the field.

Q. How did you get in the field?

A. I clum over the fence.

Q. Where did you climb over the fence; how far from where you saw this man?

A. It was a good ways; I came in on the low side, I reckon.

Q. I want to know how far you got in from whe'e you saw the man.

A. It was about ½ way of the field; not hardly ½ way; it was kind of the low end.

Q. That is down the river?

A. Yes, sir; it was right at the low corner towards the river about pretty near half way.

Q. How far from there did you get over the fence?

A. I do not know how far; it wasn't more than, I guess, 100 yards from there where I first clum over.

Q. Then where did you go?

A. I went in the middle of the cotton path; I was looking over it; I went around towards the low corner of the field; I was coming back.

Q. Towards Muscogee?

A. Yes, sir.

Q. Whose field was it?

A. It used to be Syke's field; Pete Maclemee, he is administrator.

Q. What part of the field did you get over?

A. Next to the road.

Q. Did you get over the corner of the field?

A. Yes, sir.

Q. The first corner you came to?

A. Yes, sir.

Q. Then you went out into the field?

A. Yes, sir.

Q. Pretty near middle way of the field and struck across toward another corner and looked around? Which side of the field was it you saw this man?

A. On the south side.

Q. You got over at the west corner of the field?

A. Yes, sir.

151 Q. How near down did you go to the southwest corner of the field?

A. I went, I reckon, about 50 yards of the corner.

Q. Of the southwest corner?

A. Yes, sir; but I was coming back up the side of the fence.

Q. Close to the horseweeds?

A. Yes, sir.

Q. You had seen all you went to see—all the cotton—and started back home.

A. Yes, sir.

Q. And, now, you got up within 100 yards of where you got in?

A. Yes, sir.

Q. You made your circle and was going back home?

A. Yes, sir.

Q. And you were just walking along between the horse weeds?

A. They are some kind of great big horse weeds; they grow in the fence row; horse weeds, some people call them.

Q. No, sir; it is hog weeds. You don't like to call anything by the name of hogs?

A. No; I like hog meat awful well.

Q. Now, you were walking along between the edge of the cotton and the weeds, whatever kind they were? The weeds were growing along the fence where it had not been cultivated and the cotton was clean?

Yes, sir; but the cotton was very high in there. It is river bottom, and it growed hard, some places as high as a man's head.

Q. How high was the row next the fence where the weeds were growing?

A. I don't know; I reckon 3 steps.

Q. About 10 feet?

A. I guess so.

Q. You were walking along between that and the cotton, going along to get out and go home?

A. Yes, sir.

Q. You didn't stop when you heard the man coming; you just went on in the same direction?

A. I stopped when I heard the horse's feet.

Q. And stood there until he passed?

152 A. Yes; he just went right on.

Q. How far was he from you when you heard the horse's feet?

A. I don't know.

Q. How far from you was he?

A. I never looked back; he was even with me.

Q. You didn't hear the horse's feet, then, until he got even with you?

A. I heard the horse's feet, but I never looked back.

Q. You told me all the time you heard the horse's feet and you looked back and stopped.

A. You couldn't see nothing if you looked back, because the weeds is thick in summer time.

Q. Did you not tell me while ago that you heard the horse's feet and looked back and stopped?

A. I said I stopped; I never said I looked back.

Q. You didn't hear the horse's feet until the man got even with you?

A. *Yes*; I stopped when I heard the horse's feet.

Q. The ground was hard then, wasn't it?

A. I guess so.

Q. How far was he from you when you heard the horse's feet?

A. I don't know.

Q. How far down the fence was he?

A. He wasn't no distance.

Q. How much did he lack of being even with you?

A. About 30 steps.

Q. He was coming up the same way you were going?

A. Yes, sir.

Q. You were both going west?

A. Yes, sir.

Q. You stopped and staid there until he passed you?

A. Yes, sir.

Q. And you never moved?

A. No, sir.

Q. You did not spit?

A. No, sir. I just went on then the way he went.

Q. After he passed?

A. Yes, sir.

Q. How far did he pass before you started?

153 A. Just a little piece; I guess he wasn't more than 15 or 20 steps.

Q. Then you started in a walk along after him?

A. Yes, sir.

Q. Going toward Muscogee, and he toward Muscogee; then you staid there while he was going 30 steps below you, 15 or 20 below you?

A. No, sir.

Q. You said while ago 30 steps?

A. Yes, altogether I guess that is right.

Q. And he passed 15 or 20 steps beyond you, so you staid there while the man was riding 45 or 50 steps?

A. Yes, sir.

Q. What did you do that for?

A. Just looking around.

Q. Looking around what way from the cotton patch? You did not look at him only just while he was passing; you just sort of looked over your shoulder?

A. Yes, sir.

Q. Over your left shoulder; you were ahead of him?

A. I didn't turn around and stare at him; I turned around and stopped and looked.

Q. Did you keep standing there, looking towards him?

A. No, sir.

Q. After he got about 15 steps you couldn't see him because the weeds were high?

A. Yes, sir.

Q. And the weeds were thick between you and he?

A. Yes, sir.

Q. About as far as from you to that wall?

A. Yes, sir.

Q. High and thick?

A. Yes, sir.

Q. That is the reason he couldn't see you?

A I don't know; he might have seen me.

Q. Did you have on that same hunting shirt?

A. No, sir; a coat.

Q. What color?

A. Pretty near black.

Q. What kind of a coat did he have on?

A. Yes, he had on a coat.

Q. What kind?

154 A. I didn't notice it; kind of a brownish coat, I guess it was.

Q. Did he have on a hat and coat?

A. Hat.

Q. Straw, fur, or wool hat?

A. It wasn't no straw hat.

Q. Why did you not speak to him? You were acquainted with him. You never had any trouble with him.

A. No, sir.

Q. Why did you not say, Hello, what are you doing there?

A. Because.

Q. When he got pretty near up to you, you looked back and saw him; then you turned and went to looking at the cotton?

A. Yes, sir.

Q. When he passed by, your back was towards him?

A. Yes, I guess so. I seen him pass by; I just went on, though.

Q. You didn't go until he passed by about 15 or 20 steps. What gait did he go?

A. Slow walk.

Q. Whistling along?

A. No, sir.

Q. Did he have a gun on his shoulder?

A. No, sir; I never seen the gun.

Q. Pistol or belt around him?

A. I never seen it.

Q. What horse was he riding?

A. A gray horse.

Q. What horse was he leading?

A. The horse was a spotted horse.

Q. How do you know he was spotted? Who told you?

A. I am telling it myself.

Q. Who told you he was spotted?

A. I am telling you he was spotted.

Q. Who told you?
A. Nobody.
Q. How do you know he was spotted?
A. Because I seen him.

Q. How many times had you seen the defendant before that?
155 A. I never saw him more than 3 or 4 times, I reckon.
Q. How long had you lived there at Muskogee?
A. I guess about 3 years this last spring.
Q. Did you come over from across the river?
A. Yes, sir; from Tahlequah.
Q. After you got out of the penitentiary you left there and went south. Did you know him before you went over there?
A. No, sir; he was along with Mr. Jim Lowry one time.
Q. When?
A. That has been over a year ago the last time I seen the boy was; I don't remember seeing him only just that time, that was the last time I seen him, when he was riding along side of the fence. Last summer I saw him at Mrs. Nicholson's.
Q. You were stating awhile ago the last time you saw him was with Jim Lowry?
A. Yes, sir; then last summer me and my boy went after beef cattle, and I seen him there at Mrs. Nicholson's.
Q. What did they call him up there?
A. Bood Burris.
Q. Who called him that?
A. Oh, just all the—
Q. Anybody introduce you to him?
A. No, sir.
Q. Did you ever speak to him?
A. I don't remember.
Q. Why did you leave your wagon a mile up there in the woods and walk down the field and leave nobody up there with them?
A. I went down to look at the cotton patch.
Q. Why did you not drive down to the field?
A. It was no use, I was going to get wood.
Q. Were your horses so poor you couldn't drive them down there?
A. No, sir.
Q. Why did you not drive on down there in the wagon to the field?
A. Because the people owns that land didn't allow me to cut any wood down there.
156 Q. You would rather walk than ride?
A. Yes, sir.
Q. Why did you not walk over home?
A. Well, I was already in the wagon.
Q. If you would rather walk than ride why did you not walk over home?
A. I wanted to take a load of wood back.
Q. Did you take any back?
A. Yes, sir.
Q. Where did you get it from?
A. There is a little old house close to the ferry.

Q. You got it around that house?
A. I left my horses this side of the little old house.
Q. Did you have an axe?
A. No, sir; I just picked up dry limbs.
Q. If you were going to get wood why did you not take an axe?
A. I didn't want to be chopping on Sunday.
Q. Too religious?
A. No, sir; not a religious man.
Q. What is the difference between chopping and hauling on Sunday? Why did you not drive your horses to the end of your journey?
A. Because I didn't want to.
Q. Why?
A. Because that is where I wanted to get my wood.
Q. How far did you walk in the field?
A. I don't know; I guess, putting it altogether, about 2 miles.
Q. But in the field?
A. I just went about half-way through the field, and pretty near to the low end of the field, and come back.
Q. You came to the southwest corner and got within 100 yards of there when you saw this boy?
A. Yes, sir.
Q. There was nobody with you?
A. No, sir; I just tied my horses and walked down the field.
Q. When did you first tell about seeing that man that evening?
157 You never told it at all, I suppose.
A. I told Lowry about it.
Q. When?
A. It has been a good while. He has been arrested a good while.
Q. Were you here before the grand jury as a witness?
A. No, sir.
Q. Were you ever here as a witness before this subpoena was served on you?
A. No, sir; this is the first time I have been here.
Q. Can't tell us when it was you told Lowry?
A. No, sir.
Q. He is the only one y'u told it to?
A. George Williams was asking me——
Q. What did Lowry tell you to say?
A. He never said nothing.
Q. What did you tell him, Ellis Lowry?
A. I told him I just seen that boy pass by along side of the fence where I was at one day.
Q. You could not tell him what day it was?
A. No, sir.
Q. You didn't know?
A. Yes, sir; I could have told him if I wanted to.
Q. Why did you not tell him?
A. It would be no use to find out what day it was; I never put the day of the month down.
Q. How far was he from you, that boy, when he rode past there?
A. Just close by; I guess it was about 25 or 30 steps.

Q. When he got even with you he was that far?
A. Yes, sir.
Q. How was he wearing his hat?
A. I don't know; I never noticed it.
Q. Did he have a feather in it?
A. I don't know.
Q. Wh'ch way was he looking when he rode past you?
A. Just looking the way he was going, up the road.
Q. He never looked around towards you?
A. No; he didn't look to me like he was looking around at all.
Q. Have you lost your eyesight since that time?
A. No, sir.
158 Q. You can see now as good as then?
A. No, sir.
Q. What is the matter?
A. I don't know; sometimes my eyes right smart better.
Q. How is your eye now?
A. Just about like it was then.
Q. And you could recognize him 25 or 30 steps away from you then and through the hog weeds higher than your head and just glanced at him, and you turned then and looked at the cotton, and you couldn't recognize him in here?
A. Well, it is dark in here for me; where it is out of doors and the sun shining I could see right smart better.
Q. Why did you not speak to him?
A. Because I wasn't obliged to speak to him.
Q. Why did you not ask him where he had been?
A. I didn't want to.
Q. He was going in the same direction you were?
A. Yes, sir.
Q. How far up that way did he go?
A. I couldn't tell you.
Q. How far was it up that road to where it turns off?
A. Well, I don't know; it is pretty near up to the old house; the roads forks, but when you get to James' Davis' then another comes towards Coody's Creek.
Q. How far did y'u go before you got out of the field after he passed?
A. I just went pretty near the corner of the field, then I got over the fence.
Q. Did you see him after he got over the fence?
A. No, sir.
Q. I suppose after you got out you went along looking for horse tracks in the road?
A. No, sir; there were oots of horse tracks.
Q. How do you know?
A. I know them when I see them.
Q. Did you see any horse tracks?
A. Yes, sir.
Q. Which way were they going?
159 A. They was old tracks what I seen.
Q. You didn't see any fresh tracks in the road?

A. No; I reckon not.
Q. What time did you leave home?
A. After breakfast.
Q. And drove down there above five miles and got out of the wagon and left it there and walked?
A. Yes, sir.
Q. You hadn't any dinner?
A. No, sir.
Q. Did you get dinner when you got home?
A. Yes, sir.
Q. What time did you get home?
A. In the evening, I guess an hour or two by sun.
Q. How long did it take you to get the load?
A. I never got a any load; I just got a little limbs.
Q. Then it did not take you long, did it?
A. No, sir.
Q. Then it took you from shortly after breakfast until an hour or two by sun to make that drive?
A. Yes, sir; I had 'een getting wood there all winter.
Q. Had you been getting wood there that winter?
A. Yes, sir; every once in a awhile.
Q. How long before that? A week before you saw that boy?
A. No, sir; I had been there the week before that, I hauled two load.
Q. Where did you haul them from?
A. From Coody's Creek.
Q. How near did you go to where you left the team that day?
A. I stopped pretty near the same place.
Q. And you had been there two weeks before that?
A. Yes, sir.
Q. And hauled two loads?
A. Yes, sir.
Q. What did you do with them?
A. I sold them, one of them, to Noah Miller.
Q. That was cord wood?
160 A. No, sir; just dry wood for his cook stove.
Q. You did not have an axe?
A. I had an axe at that time.
Q. What we'e you doing all that Sunday?
A. I just went down in the field.
Q. Did you lay down in the field and take a nap?
A. No, sir.
Q. And as soon as you drove up there you tied your horses and went into the field?
A. Yes, sir.
Q. You did not go below the field?
A. No, sir.
Q. You got in and took a little circle around it and got up by the side of the fence when this boy passed you?
A. Yes, sir.
Q. You did not stop to rest?
A. No, sir; I stopped a little to look around at the cotton patch.

Q. You just stopped a moment?
A. Yes, sir.
Q. What time was it when you saw him?
A. I guess it was about 2 o'clock, maybe a little past that.
Q. You had a waeth with you?
A. No, sir.
Q. Now, you say, the nearest part of the field is about a mile from the river; it is close to the creek, and about a mile from the river?
A. I didn't say how far it was.
Q. Yes, you did. How far did you say it was?
A. The creek is the one I told you how far it is.
Q. You told Col. Clayton it was about a mile from the river an close to the creek?
A. Some places close to the creek, and some places farther way
Q. About a mile from the river?
A. I don't know.
Q. Why did you tell him it was about a mile from the river?
A. I don't remember telling him that.
Q. Yes, sir; you did. You don't know how far it was from the river?
A. No, sir.
161 Q. You had never been there before, I suppose?
A. Yes, I had been up to another field above that.
Q. But to this field?
A. No, sir; I never had been inside the field before.
Q. And you had never been around it?
A. Yes, sir; I went around on the south side of the field several times.
Q. What for?
A. Hunting squirrels one time. There is a little quails.
Q. When was that?
A. I had been down there several times in the winter.
Q. How far could you see a partridge at that time?
A. I got a boy as big as I *ma*. There is a heap of town folks go down there.
Q. Did you ever kill a partridge down there?
A. No, sir; my boy always killed them.
Q. When you go a hunting you take your wagon?
A. Yes, sir.
Q. When were you down hunting squirrels last?
A. Last fall, along in September and after that.
Q. After you went down to look at the cotton field?
A. Before that; I don't know exactly how long.
Q. You were there in September?
A. Yes, a time or two.
Q. Who went with you?
A. My boys.
Q. How many boys?
A. T2o; one as big as I am and another one about 10 years old.
Q. How many guns have you got?
A. Borrowed the gun from brother-in-law.
Q. You all three went with one gun?

A. Yes, me and 2 boys all went together.
Q. Went 6 miles from Muscogee with a wagon?
A. Yes, sir. Sometimes we go over to Ellis Lowry's.
162 Q. Did you kill any squirrels down there?
A. No, sir; they killed rabbits, though.
Q. When did they kill the rabbits?
A. Along in September.
Q. How many?
A. Two.
Q. Who killed them?
A. My boy.
Q. What did he kill them with?
A. A shotgun.
Q. Whose?
A. Jack Wilky's.
Q. How far below Syke's field did you ever go?
A. I never did go to the lower end of it; I went close to the corner; I never was on the north side of the field.
Q. You never was on the south side of Lowry's field?
A. No, sir.
Q. You just went down to the southeast corner of the Sykes field?
A. I passed along that Lowry field about 10 years ago.
Q. Don't you know the field was not there then?
A. Why, there was a field there then.
Q. Where the Lowry field is?
A. I guess that is his field.
Q. You think there was a field there 10 years ago?
A. I think so. We were hunting cattle.
Q. Whose horses were you driving the day you went down there?
A. My own horses.
Q. Was this gray this boy was leading a mare or a horse?
A. I don't know nothing about it; he wasn't leading the gray horse. I never did examine the horses. I don't know whose horses they were.
Q. Was the other one a mare or a horse?
A. I don't know; I guess, though, it is a horse.
Q. What makes you guess that?
A. Because.
Q. Who told you it was a horse?
A. Nobody.
163 Q. Who told you the gray was a horse?
A. Nobody.
Q. How do you know it was a horse?
A. I never told you the gray was a horse.
Q. Was it a horse or a mare?
A. I don't know.
Q. Was the other a horse or a mare?
A. I don't know, sir; I guess a horse.
Q. Why?
A. Because it looked like a horse.
Q. You could see through the weeds and fence that it looked like a horse?
A. I saw that horse lots of times after that.

Q. Did you ever see the gray after that?

A. I don't remember seeing the gray, but I seen the spotted horse several times after that.

Col. CLAYTON. I will ask you if you did not point it out to Mr. Williams at Muscogee, the horse you saw this man riding?

A. No, sir; I didn't do that.

Q. Did you ever see the horse at Muscogee?

A. Yes, sir; not Muscogee, this side of Muscogee.

Q. Who had it?

A. I don't know; some man rode it.

Q. Who was with you when you saw this horse this side of Muscogee?

A. I was by myself.

Q. You don't know who it was had it?

(Adjourned until to-morrow morning.)

164 THURSDAY a. m., *May 29th*, 1890. 8.30 o'clock.

W. A. BURT—Recalled by Government.

Col. CLAYTON. Look at that order and see if that is the order you spoke of yesterday for this pistol?

A. Yes, sir.

Q. Who gave it to you?

A. Bood Crumpton.

Q. That is the one you speak of his going in and bringing it out and handing it to you?

A. Yes, sir.

(Order is introduced by Col. Clayton in evidence. The order is here read to the jury.)

Col. CLAYTON. I put in my handwriting on the back of the order "order for pistol."

W. K. GRIDER.

Col. CLAYTON. Where do you live?

A. In the Cherokee Nation.

Q. How far do you live, and in what direction, from Mrs. Mattie Harris?

A. I live something near a quarter of a mile north.

Q. How far do you live from Mrs. Nicholson's?

A. That is about half a mile I reckon.

Q. What direction?

A. I live south of her; I live between the two.

Q. Please look at this pistol and state if you ever saw it before?

A. Yes, sir; I did. The first time I ever saw it it was an old pis-
165 tol and had none of this nickle-plate on it at all. Sam Morgan owned it at that time. He said he was going to send this pistol off and have it replated. And I seen it after it was replated, and this is the pistol. After that at one time it was pawned here at Ft. Smith, so I heard, I don't knos. The way I know it that the pistol is the same is that the wood there (pointing) is a little thicker than common, and there is a little spot there (indicating) that wasn't nickle plated.

Q. When did you see Sam Morgan with it?

A. I seen him frequently. The last time I saw the pistol before I seen it here it was pawned to a young man at my house named Parker.

Q. Do you know Black Dog James Lowry?

A. Yes, sir. It was pawned to that young man there by Bood Crumpton, and Black Dog James Lowry redeemed it. I don't know just exactly when 'hat was but it was after Morgan was missing. I was present when Black Dog Jim Lowry redeemed it.

Q. Now, then, let me read this in explanation of that: "Please let Will Burt have that pistol you redeemed of Mr. Grider." In the order here to Mr. Lowry for the pistol the defendant says, "please let Will Burt have that pistol," this is sent to Jim Lowry, "that you redeemed for me from Grider and he will pay you for it." Please explain that. Was it redeemed from you or the other man?

A. It was redeemed from Parker. Parker at that time was staying at my house. Lowry didn't redeem it from me, he redeemed it from Parker. The defendant redeemed the pistol to Parker, and I was present when he done so. I was looking at the pistol and thought I knew it, and I asked him if that wasn't Sam Morgan's pistol; wasn't that the Sam Morgan pistol, and he said "no; that is another one," I still
166 thought it was and pulled it further out of *of* the scabbard, and I said, "Bood, aint that the Sam Morgan pistol?" He said, "No, Mr. Grider, I swear it aint."

Q. I will ask you if you remember the day upon which Sam Morgan disappeared?

A. Yes, sir.

Q. Did you see the defendant upon that day?

A. Yes, sir; he came to my house in the evening somewhere about 4 o'clock.

Q. Was he riding or walking?

A. I don't know whether he came up to the house riding or walking; I wasn't present right when he came up, but presently I came around and he was setting on the gallery holding to his bridle of a gray horse. That was the horse that Black Hoyt had owned and Mr. Morgan had owned; Bob Morgan has still got the horse yet.

Q. Did you have any talk with him that evening about Morgan; if so, what was it?

A. When he came up Kit Harris and Ed Williams was at my house that day; they had staid there pretty well all day with me. He was telling them something about Sam Morgan when I come up. I inquired into it a little and he went on and told me and the crowd that Sam had got in a buggy with a man and he was going to the Pawnee Agency, and was going out there to herd ponies, and that he was to get 3 dollars and a half a day; that he had told him to pay Kit Harris $20.00, and to pay me $5.00, and if he wasn't back by the first of December to turn the gray horse over to Bob. I remarked right there "There is a mistake right there; Sam owes me seven dollars;" and if he wasn't back by Christmas to turn the spotted horse over to Colquitt—that was the man he bought him from. He said also Sam had authorized him to gather the crop, pay the hands out of it for gathering and pay himself for his
167 trouble. That is about all the conversation.

Q. Did he in that conversation with you gentlemen say anything about a man named Keyes?

A. No, sir.

Q. Where did he say, if he said at all, where the stranger that Sam Morgan went off with was from?

A. He said that from the way that Sam spoke he supposed Sam had seen him some place else across the river; he said when he drove up Sam said "You have come, have you?"

Q. Where did he say they met the stranger on the prairie, the particular place?

A. I didn't learn that, but out on the prairie is what he said.

A. Were you present when this map was made [exhibiting map to witness]?

A. Yes, sir.

Q. What field lies west of the Sykes' field up the river?

A. Mrs. Robinson's field lies next; Jim Watson lives there at the present. (Witness points out distances on map.)

Q. Do you know where the spotted horse was when he came to your house?

A. No, sir; I don't know that I do; it seems that he said—I wouldn't be positive—that the spotted horse was at Old Uncle Billy Burris.'

Q. Did you ever see it there?

A. No, sir.

Q. Burris is his step-father?

A. Yes, sir.

Q. Who did you say was present at your house on that day?

A. Ed Williams, Kit Harris, and John Wyeh might have been present, I wouldn't be positive.

Q. Did he describe the stranger?

A. No, sir.

Q. Did he mention anyone else as being present except those you have named?

A. No, sir.

Q. Did he say anything as to how he got possession of the horses?

168 A. Nothing more than I have said, that if he wasn't back by the first of December to turn the gray horse over to Bob Morgan, and if he wasn't back by Christmas to turn the spotted horse over to Colquitt.

Q. Was there anything said about whiskey?

A. No, sir; I don't think whiskey was mentioned that evening.

Q. Did you notice whether there was anything attached to the saddle on the gray horse he was riding?

A. No, sir, I couldn't say for certain whether there was or not; I don't remember whether there was anything attached to the saddle or not.

Q. Do you know whether the defendant claimed to know the man that Morgan rode off with?

A. He didn't claim that he knew him; he claimed he was a stranger.

Q. Did you see him pass your house that morning?

A. I don't know whether I seed him or not. I told before the commissioner I saw him going south—I live on the road betwixt Mrs. Harris' and there where they were passing so frequently, and it might be, possibly, I am mistaken about that; I won't detail that positive.

Q. How long did he stay at your house that evening?

A. He was there some 10 or 15, maybe 20 minutes, not longer than that I don't think.

Q. Did anybody go off with him?

A. I wouldn't be positive, but I think Black Hoyt came and went off with him; I would not be positive, but I think that is the way of it.

Q. Do you know which way they went?

A. No, sir; I couldn't tell you which way they went; they went up the road or down the road.

Q. On the morning of the killing you are not certain whether
169 you saw this man pass your house or not?

A. I wouldn't be positive; they passed there often; I lived right on the pass-way.

Q. On the evening that Sam disappeared he came to your house—at least you found him there holding this gray horse in the presence of Ed. Williams, Kit Harris, and maybe another gentleman, and in their presence he had this conversation you have detailed here?

A. Yes, sir.

Cross-examination:

Col. CRAVENS. How long have you lived in the neighborhood where you live now?

A. I have lived in that neighborhood, it is a little over a year ago I lived in the neighborhood, and then last October, 28th day of October, I moved back to the neighborhood after having been away to Muscogge; I lived in Muscogee last summer.

Q. How long did you live down in that neighborhood when you lived there before?

A. Well, some 5 or 6 months, probably.

Q. When was that?

A. I come in there last fall was a year ago, and staid up till last spring a year.

Q. This spring a year?

A. Yes, sir; this spring was a year.

Q. What day of October did you go back?

A. 28th, when I moved to the bend; when I moved down there I moved to the Kit Harris place.

Q. You had been living there only 3 or 4 days when Sam Morgan disappeared?

A. I just lived there from the 28th day of October to the 3rd day of November.

Q. Had Sam Morgan been at your house since you moved down there?

170 A. Yes, sir; he was there Tuesday or Wednesday I believe, as well as I recollect, somewhere along there a day or so after I moved there.

Q. Only once there before he disappeared?

A. He may have been there oftener; he pretty near always stopped in passing; I lived between where he was working and where he was boarding; we was great friends and he pretty near always stopped in passing.

Q. When did you first get acquainted with him?

A. I got acquainted with him when I first come to that country.

Q. When Sam came to your house on Tuesday or Wednesday, the first time you saw him, did he have a pistol?

A. No, sir; I don't remembe' of seeing him with a pistol. He wanted to borrow five dollars to send for his pistol; he had pawned it, and wanted five dollars to redeem it.

Q. That was after you went down on the 28th day of October?

A. Yes, sir.

Q. Did you let him have the money?

A. Yes, sir.

Q. The next Sunday he disappeared did he?

A. Yes, sir.

Q. Where was his pistol at the time he wanted to redeem it?

A. He told me he had pawned it at Ft. Smith; he had been to the fair and ran short of money and he pawned his pistol. He wanted five dollars and I let him have it, and on Friday night following he come back and brought the five dollars back and handed it to me all in silver dollars. He was at my house some two or three times that night; there was a play party or some little-to-do at a neighbor's house right close.

Q. You didn't go to the party?

A. No, sir; he passed a time or two and stopped when he passed;

171 he stopped a time or two I know of.

Q. Was there any one with him?

A. I won't be positive.

Q. You saw him on Tuesday or Wednesday, whichever day he came, and then you saw him again on Friday night?

A. Yes, sir.

Q. Did you see him at any other time you recollect of before his disappearance?

A. I don't remember of seeing any more unless I saw him Sunday morning.

Q. If you saw him Sunday morning you didn't have any conversation with him then.

A. No, sir.

Q. Did he have a pistol at the party that night?

A. I don't know whether he did or not; I don't remember seeing the pistol.

Q. Then you never seen this pistol in Sam Morgan's possession did you?

A. No, sir; not after I let him have the money.

Q. You never saw it in his possession at all; you say when he came to you on Tuesday or Wednesday he didn't have any pistol and on Friday night he didn't have any pistol and you never saw him any from that time only on Sunday morning; and you didn't have any talk with him then, so you never saw him have the pistol in his life?

A. I saw him at Muscogee when he come to my house.

Q. I will ask you if the pistol he brought there at your house wasn't an old and not the nickle-plated pistol?

A. Yes, and then he fetched the nickle-plated pistol back sometime after that.

Q. When?

A. While I lived at Muscogee.

Q. Do you remember the number of the pistol he pawned at Ft. Smith?

A. I know what he told me.

Q. The number of it?

172 A. No, sir; I thought you said the calfibre of it; No, sir; I didn't ask the number of it. I seen him with an old rusty pistol, and I seen him also with the nickle plated one like that one while I lived at Muscogee.

Q. What time?

A. During the latter part of the summer or fall season.

Q. Do you know the number of that nickle-plated pistol?

A. No, sir.

Q. Then he was carrying the nickle-plated pistol during the summer, was he?

A. During the latter part of the summer, some time.

Q. Did you examine the nickle-plated pistol that he carried there in that latter part?

A. Yes, sir.

Q. What for?

A. To see what a nice job could be done on an old rusty pistol. I had seen the old rusty pistol he said he was going to send off; I was looking at it seeing what a nice job had been done out of an old rusty pistol; that was my cause for examining it so close.

Q. After it was repaired, or the nickle was put on it again, and finished up again, it looked like a new pistol?

A. Yes, sir.

Q. You could not distinguich between it and a new pistol, could you?

A. No, sir.

Q. So far as you know, you don't know but what the pistol he had was a new pistol?

A. No, sir; I only had his word for it; he told me——

Q. I am not asking you what he told you.

A. I have got a right to tell what he told me.

Q. I am not asking you what he told you; you are not hired here to represent the prosecution, are you?

A. No, sir; I am not hired at all.

173 Q. You say it has a little more dark spots on it now than when you saw it last? I believe that is what you say. That is what I understood you to say; you refer to that iron, the rusty appearance there?

A. There was about that much that wasn't nickle plated; it lacked that much of being nickle plated all over, about the size of a wheat grain, small one.

Q. That was after it was repaired?

A. Yes, sir.

Q. That was the condition of the pistol when you last saw it?

A. Yes, sir; when I first seen it.

Q. Did you see it after that?

A. Not in Sam's possession. I probably saw it in his possession lots of times after——

Q. Can you swear that is the pistol you ever saw in Sam's possession (referring to pistol introduced in evidence).

A. I swear I believe it is.

Q. Do you have any means of knowing this pistol except this little iron rust here?

A. I will swear that is the pistol.

Q. Are you willing to solemnly swear this is the pistol—what is the number of this pistol?

A. I never noticed the number.

Q. What is the cal/ibre of this pistol?

A. 45.

Q. Whose make is it?

A. I don't know; I know it is a Colt's pistol.

Q. Colt only made one of this cal/ibre, I suppose?

A. I suppose he made lots of them.

Q. Could you distinguish between this pistol and any other made by the Colt Manufacturing Company except by the number? Would it not be exactly like a pistol made on this pattern and of this cal/ibre—would it not be exactly like it except the number?

A. It is strange they would leave a little spot on it so a fellow
174 would know it by; and then look at the handle; it is thicker than common.

Q. That is the only thing you identify it by?

A. The handle and that splotch.

Q. You swear upon your oath that is the same pistol Sam Morgan had?

A. Yes, sir.

Q. Now I want to know if there would be any difference in this pistol and any other pistol of the same cal/ibre, made by the same company, and all alike except the number of it?

A. I suppose there would be a difference in the number of it.

Q. Would there be any difference except in the number?

A. There might be some noted marks.

Q. The only noted mark about this that you speak of is that it had, when you first saw it, about the size of a wheat grain, a splotch on it where the iron was not covered?

A. Yes, sir.

Q. And the handle full?

A. Yes, sir.

Q. I will ask you if it is not a very usual thing for the handle and wooden part to be a little flush and full?

A. No, sir; they are generally leveled up.

Q. Did you never see one that was as flush—a little flush in the wood?

A. Not as full as that.

Q. I will ask you if the wood does not appear to stand out on each side about the same?

A. Yes, sir; that is why I thought it lacked about that much of being a complete job; it looked so clumsy by the wood being there thick.

Q. Did you ever see any of these pistols that had been worn a month or two that did not have a little appearance of rust about the muzzle there?

A. When they are wore awhile they will wear off. The pistol had never been used when he brought it to my house; it looked bright
175 inside just as it came out of the house; he told me that he got it that very evening.

Q. I am not asking you what he said; it is not proper, I think. You appear to want to thrust it in all the time. It would be unusual to see a pistol that had been used any length of time with that little splotch on it, would it, or not?

A. If they are used that splotch will come on it.

Q. That would not be any mark of distinction between that and any other pistol worn, would it?

A. I have told you what I knew about the pistol.

Q. Yes, I think you have told a great deal more than you know. I am trying to test your knowledge.

A. I have told you what I know about the pistol.

Q. I want to know if there is any other mark of distinction between this pistol and any other like it by which you are able to identify it, except it had this little splotch here, and the fulness of the handle?

A. There is no other mark of identification on it.

Q. I will ask you if it has got the same splotch mark on it now it had when you first saw it?

A. It has got this wore off around here (indicating).

Q. It is not like it was when you first saw it?

A. No, sir; it is not like it exactly, but the same splotch was there.

Q. The same splotch is there but is a good deal larger?

A. Yes, sir; it is some larger.

Q. Then if it is not the same splotch mark that is not a mark of identification?

A. There is a part of the splotch here.

Q. Suppose you were attempting to identify a horse by a spot on him as big as your hand and when you come to see the horse it has a spot as big as your head, would that be the same spot?

A. No, sir.

176 It would not answer as a mark of identification, would it?

A. No, sir.

Q. You are willing to admit that any pistol that is worn any considerable length of time has got a splotch about the muzzle here, a nickle-plated pistol?

A. Yes, sir.

Q. That would not be any particular mark about the pistol?

A. I never did see a brand new one that was n't solid nockle-plated.

Q. All other pistols of the same make and size would have a full handle; that would not be any mark of identification?

A. I never seen one that way.

Q. If it is so they do make them all that way that would not be any mark of distinction?

A. If they are all made exactly alike they would all be alike.

Q. Who was it accused you of killing Sam Morgan?

A. I don't know that anybody accused me.

Q. Was you not accused of it?

A. No, sir.

Q. Was there not some talk of your being arrested?

A. Yes, sir; that I and Mr. Crumpton was running together.

Q. For the killing of Sam Morgan?

A. I don't know whether it was for the killing of Sam Morgan.

Q. Had you done anything else?

A. I didn't know what they was wanting to arrest me about, that I and Bood was running together——

Q. It was talked about Muscogee?

A. I don't know who talked it; it come to my ears.

Q. What did they talk of arresting you for?

A. I don't know what.

Q. Do you not know it was for the killing of Sam Morgan?

177 A. No, sir.

Q. Did you hear of anything else against you?

A. No, sir.

Q. You never heard of anything else?

A. No, sir.

Q. Were you examined before the commissioner.

A. Yes, sir.

Q. You do not remember now of seeing Bood and Morgan that morning?

A. I would not be positive I saw them at all the morning.

Q. Did you not testify before the commissioner you saw them pass that morning?

A. Yes, sir; I testified if I seen them I saw them going south that morning, but as they passed there frequently I could not be positive.

Q. Did you not testify before the commissioner you saw them pass your house that morning together towards Mrs. Harris'?

A. Yes, sir.

Q. Did you not know that was not so?

A. If I saw them at all they was going that way that morning.

Q. Here is what you said before the commissioner: "Defendant and deceased had passed my house tolerably early in the morning, going towards Mrs. Harris'." You do not remember of seeing them that morning?

A. If I saw them at all they was going that way.

Q. Did you see them that morning?

A. I saw them if they passed at all; I seen them going that way.

Q. Did you see them that morning?

The COURT. Give your best recollection about it.

The WITNESS. To the best of my knowledge I did see them, but then I would not be positive.

178 Q. Did you not state to the district attorney awhile ago you did not see them?

A. If I seed them at all, just what I told you.

Q. "They passed my house in the morning going towards Mrs. Harris'. I seen nothing more of them until defendant came to my house in the evening; he staid but a short time." Did you say that?

A. Yes, sir.

Q. I will ask you if you didn't say you saw them pass your house, going towards Mrs. Harris', that morning?

A. Yes, sir.

Q. You do not know whether it was so or not?

A. To the best of my knowledge it is so.

Q. Do you recollect it?

A. I won't be positive; to the best of my knowledge they did pass going towards Mrs. Harris' that morning.

Q. The day that the defendant was there he told you that Morgan had got in a buggy with a stranger and gone off; that he had left him to pay you $5.00 that he owed you, and Kit Harris $20.00, and if he wasn't back by the 1st of December he wanted the gray horse turned over to his brother?

A. Yes, sir.

Q. And if he wasn't back by Christmas he wanted the spotted horse to be turned over to Colquitt?

A. Yes, sir.

Q. He was to gather the crop, pay hands out of it, and pay himself for his trouble?

A. Yes, sir.

Q. What did he owe you $5.00 for?

A. Borrowed money.

Q. What did he borrow money for?

A. He wanted a little spending money to the Muscogee fair.

Q. When did he borrow it?

A. During the fair.

Q. He had afterwards borrowed five dollars from you and paid that back?

A. Yes, sir; afterwards——

179 Q. When he borrowed that five dollars to redeem the pistol and paid it back to you there on that Friday, why did he not pay you back the five dollars he had borrowed at the Muscogee fair?

A. I don't know why he didn't.

Q. Did you say anything about that?

A. No more than I remarked, "that leaves seven;" he said "that is right."

Q. What did he say about paying it?

A. Nothing about paying it.

Q. He paid you, I presume, all the money he had there?

A. I don't know whether—I didn't see any more money.

Q. You saw the five silver dollars?

A. Yes, sir.

Q. He borrowed that five from you on Tuesday or Wednesday?

A. Yes, sir.

Q. Had it two or three days?

A. Yes, sir.

Q. You say the defendant pawned a pistol to Parker?

A. Yes, sir.

Q. When was that?

A. That was some two or three weeks after Sam Morgan's leaving or disappearance.

Q. Were you present when that was done?

A. Yes, sir.

Q. Where was it?

A. At my house?

Q. What was Parker doing at your house?

A. He was staying there.

Q. What was he staying there for?

A. He was kinfolks to my wife; they came *druing* the fair at Muscogee.

Q. What did he pawn it for?

A. For the amount of four dollars in whiskey.

Q. That is, you had the whiskey there at your house?

A. I did not have it there; Mr. Parker kept it there.

Q. Your relation had it there?

A. Yes, sir.

Q. Where did Parker have the whiskey there?

A. At my house.

Q. Where—in the house, or on the house, or under the house?

180 A. It is likely to be scattered around all over.

Q. How long had Parker been staying with you?

A. He had been there from the Muscogee fair up to that time.

Q. Moved down there with you from Muscogee did he?

A. Yes, sir.

Q. How long did he continue to stay with you?

A. Well, I don't remember how long; I believe as well as I recollect that he left a little before Christmas, I would not be positive.

Q. Left just before this body was found, did he?

A. Yes, sir.

Q. He was a whiskey peddler was he?

A. I reckon that is what he would be called.

Q. You saw him sell one lot of four dollars worth, did you not?

A. I reckon so.

Q. Don't you know so?

A. Yes, sir.

Q. Was the trade made with you or Parker?

A. With Parker.

Q. To whom was the pistol delivered?

A. It was delivered to Parker.

Q. Or to Grider, which?

A. I was looking at the pistol, but it was delivered to him.

Q. Wasn't the trade made with Grider?

A. No, sir.

Q. Was the pistol in the scabbard?

A. Yes, sir.

Q. I will ask you if you didn't state while ago that the pistol was only pulled about half way out of the scabbard?

A. I pulled the pistol half way out of the scabbard and was looking at it, and asked him if that was the Sam Morgan pistol and he said no, and I pulled it further out, and I said "Bood, aint this the Sam Morgan pistol?" and he said "No, I will swear it aint."

Q. Did you pull it any further out?

A. No, sir; I didn't.

Q. You didn't pull it clear out?

A. No, sir;

181 Q. Did you pull it out at any other time?

A. The next morning I went and looked at it.

Q. Where did you find it next morning?

A. Somewhere about the place, I don't recollect where it was.

Q. When was this examination made of the pistol?

A. When I pulled it partly out of the scabbard right before the fireplace.

Q. In your house?

A. Yes, sir.

Q. The same room the whiskey was in?

A. I don't know whether there was any whiskey in there at that time; there might have been, or might not have been, I would not be positive about that.

Q. When Black Dog Jim Lowry came for the pistol did he not come with an order to Grider?

A. I do not remember whether he brought any order or not.

Q. Who redeemed the pistol?

A. Black Dog Lowry.

Q. Did he redeem it without the order?

A. Mr. Parker seen Black Dog at the burial the day before; Mrs. Nicholson's son was buried the day before, and Parker and Black Dog was there and talked about the pistol; I was off some distance and I don't know just exactly what was said, but anyhow Parker told me, says he——

Q. Never mind what Parker told you. You understood from the way that Bood described the meeting between Sam Morgan and this stranger out there that Sam Morgan and he had went off with him—that they were acquaintances?

A. He said he supposed they knew each other, for Sam spoke to him and said "You have come, have you?"

Q. Was you with Mr. Morgan on Saturday?

182 A. I don't remember whether I was or not.

Q. Do you remember of seeing him on Saturday?

A. I probably seed him, but I don't recollect it.

Q. You said awhile ago you didn't remember of seeing him after Friday night.

A. I would not be positive of seeing him.

Q. Do you know where he was on Friday night?

A. He was at my house.

Q. Where was he on Friday during the day?

A. I don't know.

Q. Where were you on Friday?

A. I couldn't say for certain.

Q. Where were you on Sunday?

A. I was there at home on Sunday.

Q. You wasn't at home when Bood came up?

A. I was at the place.

Q. Who else was there?

A. Kit Harris and Ed. Williams.

Q. Where did you eat your dinner that day?

A. I eat dinner at home.

Q. Who eat with you?

A. Kit Harris and Ed. Williams. I would not be positive but what John Wyeh eat dinner there that day.

Q. Where was Mr. Parker that day, your relation?

A. I don't remember whether he was there that day or not; I won't be positive that he was there or not.

Redirect examination:

Col. CLAYTON. I understand you to say that this man Parker was a whiskey peddler, and this pistol was pawned for whiskey?

A. Yes, sir.

Q. Did you ever see this order that was written down here in the jail?

A. No, sir.

183 Re-cross examination:

Col. CRAVENS. What did Black Dog pay Parker for the pistol?

A. He paid him five dollars and a half. The pistol was only pawned for $4.00. Bood owed Parker a dollar and a half besides, made it five dollars and a half, and he paid the whole thing and taken the pistol.

Q. What did he owe him a dollar and a half for?

A. I reckon it was for whiskey, I don't know what else.

Q. Whiskey he got at your house?

A. He might have got it there or somewhere else.

Col. CLAYTON. This Kit Harris you speak of is Christopher Harris?

A. Yes, sir.

CHRISTOPHER HARRIS.

Col. CLAYTON. Do you know the defendant here?

A. Yes, sir.

Q. What relation are you of his?

A. Second cousin, I reckon; his mother was my first cousin.

Q. You are Mrs. Mattie Harris' son are you not?

A. Yes, sir; his mother was my father's sister's child.

Q. Were you before the commissioner?

A. Yes, sir.

Col. CRAVENS. The defendant is not related to your mother except by marriage?

A. No, sir.

Col. CLAYTON. He is related to the witness by blood.

(To witness.) Did you know Sam Morgan in his lifetime?

184 A. Yes, sir.

Q. Please state where you lived last November?

A. I lived there with my mother. Sam Morgan was boarding there with us at that time. He had been there about a week, I think.

Q. Do you remember the day he disappeared from that country?

A. Yes, sir; it was the first Sunday and the third day in November.

Q. Did you see the defendant upon that day?

A. Yes, sir; the first time I saw him that morning he left my mother's with Sam Morgan. He come on Saturday evening to our house with Sam Morgan and staid all night at our house, and the next *Morgan* Sam Morgan and Bood Crumpton left the house together. They went off riding; Sam a gray horse and the defendant a spotted horse when they left our place. Sam Morgan claimed both of the horses. They went north from our house.

Q. That is the road that would lead up towards the place where the body was afterwards found?

A. Yes, sir; it went in that direction. The road made a curve before it got to that point; it went towards Mrs. Vann's, in that direction.

Q. There is no road that goes directly to the place?

A. No, sir.

Q. That is the road that goes up by James Lowry's that goes to Muscogee?

A. Yes, sir.

Q. Do you know where they were going?

A. They told me they were going to Davis' to see some girls; I think there was two girls at Davis'.

Q. What time did they leave?

A. In the morning, I think about 8 o'clock; it was early.

Q. Now, then, please state if either one of them were armed at
185 that time when they left?

A. Yes, sir; the defendant came out of the door buckling a belt around him.

Q. Would you know the pistol?

A. I don't know whether I would or not.

Q. Do you know whether Sam Morgan owned a pistol?

A. He owned a pistol about a week before he disappeared.

Q. Do you know what he did with the pistol?

A. He had it pawned over there or here at Ft. Smith, or somewhere.

Q. Would you know the pistol if you were to see it?

A. I don't know whether I would or not.

Q. Look at this pistol and see if that looks like it [witness examines pistol handed to him]?

A. I couldn't say it was the same pistol; it was the same kind of a looking pistol.

Q. Now, then, you say the defendant went into the house and got a pistol before he left?

Col. CRAVENS. No; he didn't say that; he said the defendant came out buckling a belt around him.

Col. CLAYTON (to witness). You say he went in the house?

A. Yes, sir; and came out buckling a belt around him; the pistol was in the scabbard; in buckling it flew back that way, and he pulled it over that way [indicating].

Q. Do you know what pistol he got?

A. He must have got his own.

Q. Did he have one?

A. Yes, sir. Morgan tried to sell me a pistol he got out of pawn at Bragg's Station or somewhere; he come back and wanted to trade me a pistol. I told him no; that I had one and didn't need another one; he said "Well, I can trade it to Bood then." A day or two afterwards Bood had the pistol on, and he said he bought it.

186 Q. Is this the pistol [handing witness pistol]?

A. I couldn't say; it was one like it. I presume it is the same one.

Q. When did you next see the defendant?

A. It was in the evening between 3 and 4 o'clock. That day I had went up to Mr. Grider's, going up directly after they left, and took dinner

at Grider's. Grider was there at home that day pretty much all day. Me and my brother-in-law, Ed. Williams, and a fellow named John Wyeh was setting on the porch at Grider's and I seen the defendant coming up the road to Grider's. When I seen him coming I hadn't seen him before that since that morning when he left our house. He come up there riding a gray horse.

Q. Riding the horse that the other man was riding in the morning, or was he on the gray in the morning? I think you said he was riding the spotted horse, did you not?

A. No, sir.

Q. Eh? What horse did you say he was riding in the morning?

A. I think he was riding a gray that morning?

Q. Eh? You said while ago that Sam Morgan was riding a gray horse; I want you to state how that was; how it is you said Morgan was riding a gray and the defendant riding a spotted horse in the morning; how do you say about it; ain't you mistaken about that?

A. No; I don't think I am. I know he came back riding a gray horse.

Q. But do you remember what horse he was riding when he left?

A. I think he was riding the gray horse.

Q. While ago you had Morgan on that horse when he left your house that morning. It does not make much difference. If you made a mistake on that I want you to correct it. Do you remember how they were riding in the morning?

187 A. To the best of my knowledge I think that Morgan was on the ——. He might have been on the spotted horse; it seems to me that he was on the gray.

Q. That is what you said before.

Q. Was there anybody with the defendant when you saw him coming towards Grider's house?

A. No, sir.

Q. Grider's is between your mother's and Mrs. Nicholson's, is it not?

A. Yes, sir.

Q. He was riding a gray horse when he come up there?

A. Yes, sir.

Q. Do you know what had become of the spotted horse?

A. He told us he had left it at Old Uncle Billy Burris', his stepfather's.

Q. Did he tell you how he got through to Burris'?

A. No, sir.

Q. If he made any statement to you in regard to Sam Morgan and his property, state what it was.

A. Yes, sir; he rode up there and somebody asked him—I don't know who it was, some of the three—where Sam was, and he said he met a fellow out on the prairie and he got in a buggy with him and went to Pawnee Agency to herd ponies, and was to get three dollars and a half a day or three dollars a day, I don't know which; I think it was three dollars a day to herd ponies, and $30.00 per month if he staid there, and told him to fetch the spotted horse and let Uncle Billy Burris keep it two months, and if he wasn't back in that time to turn the spotted horse over to Bob or Colquitt, I don't know which; it was one or the two; and the

gray horse—they had bought it from Black Hoyt—he was to take the gray horse to Black Hoyt, and in the trade Black Hoyt was to keep the horse until he got his crop gathered, and then turn the horse over to Bob Morgan. He was to gether his cotton crop there and pay his little
188 debts around and Hoyt to get half, and if there was anything over to send it to him.

Q. Did he say when he had left the spotted horse at Burris'?

A. He said as he come on; he didn't say at what time. That is the way we understood it, that he left it there as he come on. I don't think he made any further statement there that I think of.

Q. Did he say anything about anybody being with this stranger on the prairie?

A. No, sir; I don't think he did; he didn't state it to me.

Q. Did he say anything about Bill Keves?

A. No, sir, he didn't mention that. He staid there awhile and he said Uncle Billy Burris wasn't at home when he left the horse there, and he had better go back down there and wait until he come.

Q. Did Hoyt come there?

A. Yes, sir; and he and Hoyt went off together. They rode off down towards Bill Burris'.

Q. Did you ever see Sam Morgan after that alive?

A. No, sir.

Q. Do you know whether Sam Morgan had any money the morning he left there?

A. I didn't see any myself.

Q. You were not present when he showed it to your mother?

A. No, sir.

Q. Look at that watch and see if you know it (witness examines watch).

A. It looks like the same one that Sam Morgan had.

Q. Did you sell that to Sam?

A. Yes, sir; one just like that, chain and all and charm. I sold it to him on Monday before he went off the next Sunday. He owed me $20.00 on the watch.

Q. Have you ever been paid that?

A. No, sir; he was to pay it when he sold his cotton.

Q. I asked you if you had ever been paid the $20.00 by anybody?
189 A. Oh yes, sir. Bob Morgan paid it to me.

Q. Upon the strength of its being the same wat*he* you sold to Sam, Bob Morgan, his brother, paid you $20.00 after the body was found?

A. Yes, sir.

Q. Where did the defendant, Bood Crumpton, live after the disappearance of Sam Morgan?

A. He staid at Hoyt's awhile and staid at my home a part of the time, at my mother's.

Q. Do you know when he was arrested?

A. I wasn't in the bottom at the time he was arrested; I was up at my brother-in-law's, but after I got home I heard he was arrested in the bottom there by Bragg's Station.

Q. Were you there at home when he left the bottom?

A. Yes, sir; I was there at home.

Q. When was that?

A. It was on Monday morning before Christmas.

Q. Was that on the Monday morning after the Sunday the body was found?

A. Yes, sir.

Q. Where was he staying then?

A. I don't know where he staid on Saturday night before; I don't remember. I got with him Sunday I know.

Q. Where did you see him Sunday?

A. I got with him at Mr. Grider's.

Q. That is the day the body was found?

A. Yes, sir.

Q. The next day he left?

A. Yes, sir. He staid part of the night at home on Sunday night.

Q. How long did he stay at your mother's that night?

A. I don't know what time he came in that night, but next morning about day, about good daylight I reckon, he was putting on his clothes there in the house in the room; we was sleeping in *in* the same
190 room; I asked him where he was going and he said, "up to Jim Lowry's," and I asked him what Jim Lowry's, and he said "Black Dog Jim Lowry's that lives on the hill."

Q. Did he go before breakfast?

A. Yes, sir.

Q. What time of night did he come into your mother's.

A. I do not know; I don't remember when he came in.

Q. What is the reason you don't remember?

A. I was asleep.

Q. He came in late, did he?

A. Yes, sir; it must have been.

Q. That was on Sunday night?

A. Yes, sir.

Q. That was the night of the day the body was found?

A. Yes, sir; that is the first I heard of it.

Q. The next morning he left?

A. Yes, sir.

Q. Do you remember when he was arrested?

A. I heard it was on Friday—the next Friday. I don't know the name of the man whose place he was at. He was at an Indian fellow's place who lives 4 or 5 miles—I don't know exactly—from where I live.

Q. Isn't it 25 or 30 miles?

A. I don't know where he lives, but the fellow he was at the house of was in Bragg's Station the day the boys went out and got him, is the way I heard it.

Q. That man was in Bragg's Station?

A. Yes, sir.

Q. That is on the other side of the Arkansas River from you?

A. Yes, sir.

Q. You say you don't know where he does live?

A. No, sir.

Q. Burt arrested him, did he not?

A. Yes, sir.

Q. He ought to know, then, how far, better than you?

A. Yes, sir.

Q. Did you see him on Sunday during the daytime—the day the body was found?

A. Yes, sir; I first saw him at Mr. Grider's and then me and him rode up to Mrs. Nicholson's in the daytime and staid there——

191 Q. When did you first learn that body had been found?

A. Sunday.

Q. Who told you?

(Col. Clayton having sent for the writ in this case, and having received it, here introduced it, showing that the arrest was made on the 27th day of December.)

A. I don't remember now who it was. I heard it up there after we got to Mr. Hoyt's.

Q. Was he with you when you heard it?

A. I don't remember whether he was there or not—he must have been—we wasn't together all the time, though.

Q. When was the last you saw of him in the afternoon?

A. There at a man named McDaniel's. That was after we had heard the body was found that I heard of it. This was after night we was there—it must have been 8 o'clock or a little after. He left me there and he didn't tell me where he was going. We were both of us horseback.

Q. What horse was he riding?

A. I think he was riding his half brother's horse. He left McDaniel's a little after 8 o'clock.

Q. That was Sunday?

A. Yes, sir.

Q. Did you know whose body it was at that time had been found?

A. No, sir.

Q. What time did you leave McDaniel's?

A. It must have been half past 8; I didn't stay there but a little while.

Q. About what time in the night do you think he got to your house?

A. I couldn't say. I was asleep. It might have been directly afterwards.

192 Q. Did he sleep with you?

A. No, sir; he went to bed in the same room I was in. He got up and left just about daylight and said he was going to Black Dog Lowry's. I never seen him any more until he was arrested. Black Lowry lived on the mountain just west of me on the same side of the river, about a mile from me I reckon. I don't know what the name of the mountain is.

Q. You heard that the body had been found that day and heard it at Grider's, did you not?

A. I don't remember whether it was at Grider's or not I heard it.

Q. Did you have any talk with the defendant about it; did you say anything to him?

A. No, sir.

Q. You did not suspicion at that time that the body was that of Morgan?

A. No, sir.

Q. Did you see the body afterwards?

A. No, sir.

Q. Did you write a letter to Sam Morgan?

A. Yes, sir.

Q. Where did you direct it?

A. Deep Fork, I think.

Q. Where is that?

A. Out there somewheres near the Strip.

Q. Why did you direct it to Deep Fork?

A. I didn't know where Morgan's post office was. I put Lena Tomphson's name on the letter—I did not know whether to send it to the Pawnee Agency or not—and me and Mr. Grider was talking one day, and he says that I wasn't certain about where he was and I could back the letter in her care and he would get it. She lives out there on the Strip. She got the letter and sent it back to Bob Morgan. I seen it afterwards and Mr. Morgan had it.

Q. The same letter that you wrote?

A. Yes, sir; I reckon it was the same.

Q. Why did you send it in her care? Why not send it in care of the gov. of California or the Tycoon—I will not say where because I might miss it.

193 A. He had a letter he claimed to have got from Sam Morgan.

Q. Who had.

A. The defendant.

Q. Did you see the letter?

A. Yes, sir; in the letter it stated that Lena must have told him to tell Grider to come out, that she wanted to let him have a piece of land; that is the way I come to direct the letter to him in her care.

Q. Did you see the letter that he claimed to have received from Sam Morgan?

A. Yes, sir.

Q. Did you know the handwriting?

A. No, sir.

Q. Did you know Sam Morgan's handwriting?

A. I have seen a right smart of it, but then I could not say whether it was his or not.

Q. Did you ever see any of the defendant's handwriting?

A. Mighty little.

Q. Is his handwriting anything like the other man's?

A. I could not say it was.

Q. Is that Bood Crumpton's handwriting [handing witness the order for the pistol which has been introduced in evidence]?

A. I don't see that it resembles it at all.

Q. Do you know Bood's?

A. No, sir; I don't.

Q. You don't see it resembles whose? Do you say it don't resemble Crumpton's handwriting? Is that what you mean?

Col. CRAVENS. He says he didn't see that this handwriting resembles that in the letter that he read, comparing that handwriting with this.

Cross-examination:

Col. CRAVENS. I understand you to say that Morgan had his pawned at Ft. Smith.

194 A. Yes, sir; I think it was at Ft. Smith, and he had sent up to Bragg's Station.

Q. When did he get it at Bragg's Station?

A. On Saturday night before he went off the next Sunday. He went off on Sunday; on Saturday the week before he went to the station for his pistol.

Q. Then, after he had gotten it, he had had it about a week?

A. Yes, sir.

Q. He had at all events tried to trade it to you after he got it?

A. Yes, sir.

Q. How did he get the money to redeem his pistol?

A. He borrowed some from Mr. Grider.

Q. Where?

A. There at Grider's house.

Q. Don't you know that Grider had only moved down there on Monday before he left on Sunday. That is what he testified to; ain't that right? Don't you know that? If he moved there on the 28th of October and Morgan left on the 3rd of November, he could not have been there two weeks, could he?

A. I don't know how long he had been there.

Q. If he had moved down there on the 28th of October and Morgan had left on the 3rd of November, that would only be 5 days from the time that Grider moved down there until Morgan left, if he moved down on the 28th?

A. Grider said he loaned him the money.

Q. I am not asking you what he said.

A. I never saw him loan the money to him.

Q. You don't know anything about that?

A. No, sir.

Q. Now, you state that he got the pistol on Saturday the week before he left. That is the time he went after the pistol?

A. Yes, sir.

Q. He tried to trade the pistol to you?

195 A. Yes, sir; he says "When I get the pistol here I want to trade it to you." I told him I didn't have any use for it; I had traded for one.

Q. What did he offer the pistol to you for?

A. $10.00, I think. When I said I didn't want it he said he could trade it to Bood, and I afterwards saw Bood with the pistol, and he said he had bought it from Sam Morgan.

Q. That was before Sam disappeared?

A. Yes, sir.

Q. When was it you sold him the watch?

A. It was on Monday before he went off on the next Sunday.

Q. How much did you sell it to him for?

A. $20.00.

Q. Did he pay you for it?

A. No, sir; he said he didn't have the money right then, but he would pay it as soon as he got out another load of cotton.

Q. Did he sell any cotton during that week before he disappeared?

A. I don't think he did.

Q. He didn't to your own knowledge, and he was boarding at your mother's house?

A. Yes, sir.

Q. You lived at your mother's house?

A. Yes, sir.

Q. During that week had he been out of the neighborhood anywhere?

A. Not that I know of.

Q. You were there all the time, were you not?

A. Yes, sir; it seems like he staid at Mr. Hoyt's one night. It seems like there was one night he wasn't there.

Q. Sunday was the 3rd of November. That is the way it shows on last year's almanac; the Monday before that was the 28th of October, according to the calendar. The 29th and 30th and 31st of October after that and the 1st and 2nd of November make 5 days intervening between the day you sold him the watch, the 28th of October, before he went off on Sunday?

A. Yes, sir.

196 Q. He didn't have any money to pay for it?

A. No, sir.

Q. When he got the pistol he had to borrow money to pay for it?

A. That is my understanding.

Q. Did you learn that from Mr. Morgan himself; did you hear him say when he was going after the pistol, or how he was going to get it?

A. No, sir.

Q. You don't know how he got it in point of fact?

A. No, sir; he said he had it in pawn over here somewhere——

Col. CRAVENS. I want to offer in evidence this calender showing that the 28th of last October was on Monday, and Sunday was the 3rd of November.

Q. He had no money?

A. None that I seen.

Q. He had none to pay for the watch; didn't pay any?

A. No, sir.

Q. He didn't sell any cotton before he left?

A. Not that I know of, sir.

Q. How many acres of cotton did he have, do you know?

A. 10 or 12 I would think.

Q. How did it turn out; what kind of a crop was it?

A. It was a pretty fair crop of cotton.

Q. How much had he sold up to that time?

A. I don't remember; he had sold some, though. He had sold some to go there to the fair.

Q. After looking at that pistol are you able to say that is the same pistol that Sam Morgan had and brought to trade to you?

A. No, sir; I couldn't say it was the same one.

Q. What you say about it is, that it is a pistol like that?

A. Yes, sir; it looks like the same.

Q. After that you saw the pistol in the possession of Bood, and Bood said he traded for it?

A. Yes, sir.

Q. That was before Sam disappeared?

A. Yes, sir.

197 Q. When they went away that morning did you see any pistol on Sam Morgan?

A. No, sir.

Q. You do not know whether he had one or not?

A. No, sir.

Q. You didn't see any on the defendant except you saw him buckling a belt around him as he went out; did you see the pistol or the shape of it?

A. I *I* just saw the handle of the pistol.

Q. What color was the handle?

A. The handle was walnut color. I could not see the barr*le*.

Q. A color like that handle; is that what you call a walnut color? [Pointing to pistol which has been introduced in evidence.]

A. Yes, sir; that is what I call a walnut handle—walnut-color handle.

Q You could not say whether this is the same pistol or not?

An. *A*. No, sir.

Q. How far is it from where you lived to Bragg's Station?

A. 6 miles.

Q. Do you know where Garfield is?

A. Yes, sir.

Q. How far is that from Bragg's Station?

A. It must be ten or twelve miles.

Q. Isn't it called five miles; Garfield is not on the road, the railroad, is it?

A. No, sir.

Q. Ain't it called five miles from Garfield to Bragg's Station?

A. I don't know; I never did travel the road from Bragg's Station to Garfield.

Q. How far is it from where you lived to Garfield?

A. We call it fifteen miles, somewheres along there, the way we had to go; we turned off before we got to Bragg's Station.

198 Q. You didn't go up to Bragg's Station?

A. No, sir.

Q. Is it below Bragg's Station or above it? I mean with reference to the river; do you leave Bragg's Station to the left or the right in going from your place?

A. We leave it to the right. We go down across the river; go right along towards Bragg's Station; and before we get there, in a mile and a half or two miles, we turn off and leave Bragg's Station to our right.

Q. Turn on your left and go up the river like?

A. Yes, sir.

Q. You have given an account of what Bood said about where Morgan was when he came back, and you have given a full statement of the matter, have you?

A. Yes, sir.

Q. That is, that he said that Morgan had gone off with a party in a buggy to the Pawnee Agency; what was it he said about the pay?

A. He was to have, the way I understood it, he was to get three dollars a day out there.

Q. After that what?
A. After that he was to get $30.00 per month.
Q. That is what you understood him to say?
A. Yes, sir.
Q. Where did you learn that, now; were you there at Grider's?
A. Yes, sir.
Q. That is the conversation that took place in Grider's presence?
A. I don't know whether Grider was there or not, but he come up directly afterwards. He was around the place there.
Q. You were with the defendant on Sunday before Christmas?
A. Yes, sir.
Q. Where were you on that day?
A. We first got together at Grider's, I think, and then we went
199 up to Mrs. Nicholson's and staid there.
Q. What time did you get up to Grider's?
A. I don't know whether it was right after noon or just before noon; it was close to about noon, though, I think.
Q. Where did you eat your dinner that day?
A. I don't remember whether we eat any at all or not.
Q. After you met with him at Grider's, how much were you together; where did you go and what became of you?
A. We went on together at Mrs. Nicholson's and staid there a little while, and got on our horses and went up to Black Hoyt's; and we staid there the rest of the day until after supper; we eat supper at Black Hoyt's; James Lowry was there, the deputy sheriff, and this James Lowry that is here now, and Black Hoyt and Sam Bennett; they all left before me and the defendant and Jim Lowry, the deputy sheriff, and Black Hoyt.
Q. Did the deputy sheriff eat supper there?
A. Yes, sir.
Q. After supper where did you go to?
A. Black wanted us to go to Christian's—to a fellow named Christians.
Q. What for?
A. He had a race horse to be run on Christmas day with him, and wanted to see something about the race horse; we told him we could not go that day, but we went on down the road and stopped at Mrs. Nicholson's awhile. We went from there to McDaniel's; that is the last I saw of him that night.
Q. Did you go to McDaniel's?
A. Yes, sir.
Q. While you were there he left?
A. Yes, sir.
Q. Did you ride down to McDaniel's?
A. Yes, sir.
Q. You rode one horse and he the other.
200 A. Yes, sir.
Q. What horse was he riding?
A. I think his half brother Burris' pony.
Q. You were together all the afternoon from the time you got together at Grider's until you separated at McDaniel's?
A. Yes, sir; unless a little while at a time.
Q. How long did you stay at McDaniel's after he left?

A. I think it was half an hour.

Q. What were you doing at McDaniel's?

A. I wasn't doing much of anything, but setting around McDaniel's.

Q. How far did he live from your mother's?

A. About half a mile, I reckon; maybe more.

Q. You have a brother-in-law named Ed. Williams, have you not?

A. Yes, sir.

Q. Where did he live then?

A. Just below me, below my mother's house, where Robert Morgan lives now.

Q. Where did McDaniel live from your mother's house?

A. About half a mile.

Q. But with reference to Williams—did Williams live between your mother's and McDaniel's?

A. He lived between my mother's and Grider's [Witness locates on map where the different pa'ties lived.]

Q. How far is it from Mrs. Nicholson's down to Grider's?

A. It is a quarter maybe, or a little further, maybe half a mile.

Q. Did McDaniel live about half the distance?

A. No, sir; he lived a little nearer.

201 Q. Ed. Williams lives, or did live, between Grider's and your mother's?

A. Yes, sir; he lives on the same side of the road my mother does, about half way between my mother's and Grider's.

Q. When you went home did you stop at Ed. Williams' to see whether Bood was there or not?

A. No, sir.

Q. Don't you know he started to go to Ed. Williams'?

A. No, sir; he didn't tell me where he was going. I asked some one where he went. Some one said he went off down the road, and didn't say where he was going. [Diagram as explained by witness is shown to the jury.]

Q. Ed. Williams lives between McDaniel's and where your mother lives the defendant left you at McDaniel's?

A. Yes, sir.

Q. You say you heard somewhere that day, but you don't know exactly where, that a dead body had been found?

A. No, sir; not at that time; I heard there was a man found dead up there.

Q. Did you hear anything about who it was?

A. No, sir; I never heard who it was.

Q. I mean that day?

A. No, sir.

Q. You don't know where you did hear that?

A. No, sir; I don't remember where it was; I heard it that day, though, somewhere.

Q. That Sunday?

A. Yes, sir.

Q. What time in the day did you hear it?

A. I could not say; it was in the evening, though, I think.

Q. Do you know who told you about it?

A. I don't know whether it was Grider or some one there at Hoyt's.

Q. You don't know whether the defendant was present when you heard that or not?

202 A. No, sir; I do n't know whether he was standing there or not.

Q. You don't know whether you were setting down or lying down?

A. I don't know what I was doing; whether I was walking or riding.

Q. You don't know who told you, or you don't know who was present when you did learn it?

A. I don't know; I think Charley Glass was standing there.

Q. Standing where?

A. When I heard it, but I don't know whether it was at Grider's or at Hoyt's. There were several of us together there.

Q. What was told to you about it?

A. Whoever it was, made the remark that there was a man found dead up there on Coody's Creek, in a hole; and we begin talking around who it could be. Well, nobody didn't guess the right one at all as near as I understand it; they was talking about first one and then another that had been in there and went off.

Q. You do not know whether the defendant heard that or not that day; you and he didn't have any talk about it that day?

A. No, sir.

Q. I wish you would fix the time and the place when you heard that report.

A. I could not tell what time of day it was.

Q. If that body was found late on Sunday evening the news could have hardly have gotten down to you. Do you know of any means by which it could have gotten down to you if it was found late Sunday evening?

Col. CLAYTON. The testimony shows it was found about 11 or 12 o'clock Sunday morning.

203 Col. CRAVENS. (To witness.) You don't know what time it was you heard it?

A. No, sir; it was in the evening, I think.

Q. Did Bood tell you he was going to Lowry's or that he was going to Bu'ris's, when he got up next morning?

A. He told me he was going to Lowry's.

Q. Did he tell you what he was going to go there for?

A. No, sir.

Q. Did you ask him?

A. No, sir.

Q. That was on Monday?

A. Monday morning early.

Q. What day of the month would that be?

A. I couldn't tell you; it was just about Christmas.

Q. Christmas come on the 25th?

A. It generally does.

Q. By referring to 'he almanac I see that Monday was the 22nd. You did not see Lawson on Sunday, did you?

A. No, sir.

Q. Any of the Lawsons?

A. No, sir; if I did, I didn't kno' them.

Q. Do you know where Jim Lawson lived at that time, this one who is a witness here?

A. No, sir.

Q. Where does he live now?

A. On Mack Wiggins' place.

Q. Do you know where that Syke's field is?

A. Yes, sir; I have seen the field. [Witness locates different fields on diagram.]

Q. When you learned on Sunday there was a dead man found up there, when did you go up to where he was?

A. I never went at all.

Q. When did you see Bob Morgan next; after you learned that?

A. I don't remember when it was I did see him.

Q. On the day after Sam Morgan disappeared, do you know
204 where Bob Morgan was?

A. I don't know where he was; he told me afterwards he was at Colquitt's.

Q. Who got all of Sam's property—horses, cotton, and so forth?

A. Bob Morgan.

Q. He took possession of it the next day after Sam disappeared, did he not?

A. Next day or two, I don't remember whether it was the next day or when it was; it wasn't very long.

Q. Did you go to the burial of Sam Morgan?

A. No, sir.

Q. Why not?

A. I went up there Tuesday morning, I believe it was, and they said they had buried him that night.

Q. What night?

A. On Monday night; Monday evening or Monday night.

Col. CLAYTON. Did you go up there Christmas, or the day after or the day before Christmas, when you went up there and found the body buried?

A. It must have been the day before Christmas; it was, I guess, on Tuesday before Christmas.

Col. CRAVENS. Sunday was the 22d, Monday would be the 23rd, Tuesday would be the 24th, Wednesday, Christmas, would be the 25th.

Col. CLAYTON. (To witness.) It must have been Christmas you went up there?

A. I understood they taken the body up on Monday.

Col. CRAVENS. (To witness.) You went up there on Tuesday morning and the body had been buried?

A. Yes, sir.

205 Redirect examination:

Col. CLAYTON. Why do you say it was Tuesday now? What is it that makes you remember it was Tuesday. Other witnesses have sworn that the body was not taken up until Tuesday.

A. I wasn't there.

Q. Well, but you were there afterwards, and you say it was Tuesday morning; I want to know how you know it was Tuesday morning?

A. I went to Black Hoyt's and told him; I says "Let's go up to the burial." He says, "No; they buried him last night."

Q. How do you know that was Tuesday?

A. I understood they took him up on Monday.

Q. That is the reason you think it was Tuesday, because you understood they took him up on Monday. If they took him up on Tuesday it must have been Wednesday you were there, Christmas morning?

A. Yes, sir; I went up next day, next morning after they took him up that day.

Col. CRAVENS. (To witness.) Did your mother start up with you up to the burial?

A. I don't think she did; she may have started; she didn't go all the way.

Q. You didn't go all the way either did you?

A. No, sir; I just went to Hoyt's.

Q. Did your mother not go with you to Hoyt's on the way to that burial?

A. I don't remember.

Q. Were you well acquainted with both Bood Crumpton and Sam Morgan?

A. Yes, sir.

206 Q. You were with them a great deal, were you not?

A. Yes, sir; off and on.

Q. I will ask you whether they were friendly or unfriendly?

A. They were friendly to the best of my knowledge.

Q. From their actions did they not appear to be very friendly?

A. Yes, sir.

Q. Good friends?

A. Yes, sir.

Col. CLAYTON. (To witness.) Bood thought a good deal of Sam, did he?

A. I could not say that he thought a great deal of him, but then they was good friends.

Q. He went to see him buried after he was taken up, did he not?

A. I wasn't there; I don't know.

Q. You know he rode off that morning; you know enough about it to know he wasn't there; you know he got up before day that morning after the body was found and left. He told you he was going to Jim Lowry's, and you never saw him any more until he was arrested. When you went down there on Tuesday morning did you see anything of Bood?

A. No, sir.

Q. He wasn't down there to see the man buried, was he—his friend?

A. No, sir; I never heard it was Sam Morgan until the next day after I heard there was a man found dead.

Q. General talk all over the country that it was Sam Morgan?

A. Yes, sir.

Q. Mr. Bood, his particular friend, was non est he wasn't at the burial?

A. I never saw him any more after he left home.

Q. How was Bood to pay for this pistol, do you know?

A. Help him pick his cotton; that is what I understood.

207 Q. Do you know—don't you know that after the man disappeared that he charged for the picking of his cotton, and gave him no credit for that pistol?

A. I know I was up there one day and he wanted Bob to pay him for some cotton he had picked.

Q. Bob paid him too, did he not?

A. He paid him for some of it.

Q. He paid him for all that Sam hadn't paid him, didn't he?

A. He claimed more than Bob paid him, and he said he would not pay that until he was ordered.

Q. How much more did he claim?

A. I don't remember.

Q. Two or three dollars, was it not?

A. Yes, sir; it must have been.

Q. Did the defendant pick any more cotton after the disappearance of Sam?

A. I think he worked one day.

Q. What day was that?

A. On Monday.

Q. On the next day after his disappearance?

A. Yes, sir.

The COURT. Did you learn that the body was found on Sunday?

A. Yes, sir.

Q. Did you tell this defendant Sunday night when he came there?

A. No, sir.

Q. Did you have any talk with him on that subject?

A. No, sir.

Col. CLAYTON. They were together the afternoon before that when this witness heard of about the body?

(Jury takes a five minutes recess.)

208 BILL KEYES.

Col. CLAYTON. Bill Keyes is your name?

A. Yes, sir; that is the name I go by.

Q. Are you a Cherokee?

A. Yes, sir.

Q. Where do you live?

A. Near Muscogee, Cherokee Nation, about 6 miles from Muscogee.

Q. Do you know this man here, Bood Crumpton?

A. Yes, sir.

Q. How far do you live from him?

A. Well, I live about three miles now from where he lived the last time I knowed him.

Q. Where did he stay then?

A. He staid at Hoyt's when I knowed where he staid.

Q. You lived about three miles from Hoyt's, then?

A. Yes, sir.

Q. On the Muscogee road?

A. No, sir; off the Muscogee road.

Q. What direction from Hoyt's?

A. Out this way [indicating].

Q. What direction from the white church?

A. It is northwest of the white church.

Q. On what road?

A. It ain't on any road; it is near the Muscogee road from the bend, about a quarter from the road.

Q. How far from Jim Lowry's?

A. It is only about three miles from Lowry's.

Q. In what direction from Lowry's?

A. Southwest.

Q. How far from Joe Harris'?

A. About 2 miles.

Q. What direction from Joe Harris'?

A. Northwest.

Q. You lived pretty near between Lowry's and Harris'?

A. Yes, sir; pretty near, I guess.

209 Q. Did you know Sam Morgan?

A. Yes, sir.

Q. I will ask you if you remember of his disappearing from that country?

A. No; I didn't know it; I didn't know he was gone.

Q. I will ask you if upon any Sunday or upon any other time you saw him and the defendant together riding two horses.

A. No, sir; I never saw them.

Q. Hold on until I state the whole question. And you see a man come along in a buggy, and then Morgan get into the buggy, and Morgan and a man named Landrum go off to get some whiskey, and you go along with them, and you come back with two horses, and give them to this man, the defendant, telling him what to do with them, or anything of that kind?

A. No, sir.

Q. This is said to have occur'ed at Harris' field—Joe Harris' field. Do you know where that is, near the white church?

A. Yes, sir.

Q. Did anything of that kind ever occur at that field? You and a strange man named Landrum and Morgan go off; Landrum go off with you and Morgan to get some whiskey and you bring two hors's back, one gray and one spotted, back to where this man was, in the corner of the fence?

A. No, sir.

Q. On the day that Morgan disappeared from that country—I don't know whether you know the day or not—on the first Sunday in November last, do you know where you were that day?

A. Yes, sir.

Q. Where were you?

A. I was up on the creek.

Q. What creek?

A. Coody's Creek, about 2 miles from where I lived, I suppose, near about, with another man by the name of Charley Glass, went to gather pecans.

Q. Where were you hunting pecans.

A. On Coody's Creek.

Q. Near whose place?

A. Near Maclemee's place.

210 Q. There are pecan trees in there?

A. Yes, sir; above his house.

Q. How far is that from Joe Harris' field?

A. About 2 miles, I suppose; near about.

Q. Then it is not true that you had anything to do or knew anything about Morgan's going off in a buggy?

A. No, sir; I don't know anything about it; I hadn't seen either one of them that day.

Q. You hadn't seen either Morgan or the defendant?

A. No, sir.

Q. Is there any other Bill Keyes up there in that country?

A. Yes, sir.

Q. Where does he live?

A. Somewhere near Tahlequah.

Q. He didn't live over there anywhere near you?

A. I don't know where he lived, but the last time I knowed where he lived he lived near Tahlequah.

Cross-examination:

Col. CRAVENS. How far do you live from Coody's Creek?

A. About half a mile; near about.

Q. How far do you live from Black Hoyt's?

A. About three miles, I suppose.

Q. Up the creek towards Muscogee from Black's, didn't you?

A. West of Black's.

Q. That is up the creek, ain't it? Black didn't live on the creek?

A. Black lives on the river; I don't know just how far.

Q. You live about a half a mile from Coody's Creek.

A. Yes, sir; about.

211 Q. How far did you live from the ford at Coody's Creek?

A. About half a mile, I suppose.

Q. There is a crossing there, said not to be very far from the Sykes field; do you know where the Sykes field is?

A. Yes, sir.

Q. How far do you live from the crossing that is on Coody's Creek by the Sykes field?

A. The main crossing at that point is half a mile, near about, from where I live.

Q. Then there is a wagon crossing above you, was it, or which way did you live, below or above the crossing?

A. I lives right straight up the hol'ow from the crossing of the creek.

Q. What direction did you live from the crossing?

A. I lived east of the crossing.

Q. Then you lived below the crossing? The creek is running almost east there, isn't it?

A. No; it is running northeast from my place, near about.

Q. You live half a mile from the crossing, east of the crossing?

A. Yes, sir.

Q. Then you live rather down the creek from the crossing?

A. Not on the creek; I live right straight out from the creek. You can call it either down or up, either one.
Q. I want to call it the way it is.
A. I live right straight out from the creek.
Q. You live a half a mile from the crossing?
A. Yes, sir.
Q. Do you live on the road that runs from Black Hoyt's up to that crossing?
A. No, sir.
Q. Which side of that road do you live on?
A. On the left-hand side.
Q. That is, on the north side?
A. No, sir; on the south side.
212 Q. How far from the road?
A. About a half mile, I guess, near about.
Q. About half a mile from the road?
A. Yes, sir.
Q. On the left hand side of the road——
A. No; it ain't more than a quarter from the road.
Q There is a trail crossing also below that wagon crossing, isn't there?
A. Yes, sir.
Q. How far down to the first trail crossing?
A. There is a place there where stock cross, several places.
Q. You are familiar with all the crossings there?
A. Yes, sir; I have saw two or there right just a little past below the wagon crossing. There is a trail there.
Q. What field were you hunting pecans at?
A. Maclemee's.
Q. That is the Sykes field. Maclemee was the administrator of it?
A. No, sir; it was at Maclemee's—another place.
Q. How far is that from where you live?
A. It is near about two miles where I was.
Q. Which side of the creek is Maclemee's on?
A. On the west side of the creek.
Q. Between the creek and the river?
A. Yes, sir.
Q. You were on the other side of the creek?
A. On the east side.
Q. What is that man's name that went up there with you?
A. Charley Glass.
Q. Where is he?
A. He is at home, I suppose.
Q. What time did you go up there?
A. I guess it was about 8 or 9 o'clock—along about there—along in the morning.
213 Q. What time did you get home?
A. About two or three o'clock.
Q. Did you see Rider—one-eyed Rider?
A. No, sir; I didn't see him.
Q. What day of the month was that that you were out gathering pecans?
A. The third day of November.

Q. What day of the week was it?
A. It was on Sunday.
Q. Where were you on the 10th of November? [Witness studies.]
Q. You can not tell, can you?
A. I guess I was around home.
Q. You don't recollect?
A. No, sir; not exactly now.
Q. Where was you on the 27th of October?
A. I don't know just the dates where I was; I was at home.
Q. You can not tell. You don't remember anything about what took place on the 27th of October, do you?
A. No, sir.
Q. You don't know where you were on Sunday, the 27th of October, or Sunday, the 10th of November. Do you know where you were on the 17th of November?
A. No, sir; I never kept any account of where I was. I was about home during all that time—about.
Q. Do you know where you were on the 24th of November?
A. No, sir.
Q. Do you know where you were on the 20th of October?
A. I could not tell you now.
Q. Do you know where you were on the 13th of October?
A. No, sir.
Q. On the 6th of October?
A. No; I was around home some place.
Q. I asked you every Sunday in October where you were, and every Sunday in November where you were, and you can not tell where you were on a solitary Sunday in November afterwards, or in October
214 before, except this single, solitary third day of November. You can tell where you were on that day, but you can not tell where you were on any other Sunday. Do you know the defendant, Bood Crumpton?
A. Yes, sir.
Q. You knew Sam Morgan?
A. Yes, sir.
Q. You were not well acquainted with them; or were you?
A. I knowed Bood for about 3 or 4 years, on or about; I have seen him though ever since he was a child when he was a good big boy.
Q. You never saw Sam and Bood together in their life, did you. You didn't see them together on that Sunday you were hunting pecans?
A. No, sir.
Q. You never saw them together in your life?
A. Yes, sir.
Q. When?
A. At the Muscogee fair.
Q. They were together there?
A. They were around there sometimes; they didn't go together all the time.
Q. Did you see them together there?
A. Yes, sir; the two men together.
Q. Talking together; talking with one another?

A. I never saw them talking with one another; I never noticed them; I saw them walking along together.

Q. What day did you see them together at the Muscogee fair?

A. I don't remember what day it was; it was the time of the fair though.

Q. You don't know what day it was though?

A. No, sir.

Q. What was that man's name that was with you that Sunday, the third day of November?

A. Charley Glass.

Q. What time did you go pecan hunting?

215 A. About 8 or 9 o'clock, along about that time; it was in the morning.

Q. What time did you get back home?

A. Between 2 and 3 o'clock, along about that.

Q. Where did you get your dinner?

A. Got it at that boy's house, Charley Glass' home.

Q. What time did you get dinner?

A. We got dinner just a few minutes after we got back, I don't know just what time.

Q. How far did Charley Glass live from you?

A. He lives near about a quarter.

Q. You didn't get dinner up there where you were gathering pecans?

A No, sir.

Q. Did you walk or rode?

A. We rode.

Q. In a wagon or horseback?

A. Horseback.

Q. Charley lives about a quarter of a mile from you; is he any kin to you?

A. No, sir.

Q. You got with Charley Glass 8 or 9 o'clock; you got with him at his house, or did he come to your house?

A. I staid all night with Charley Glass Saturday night, and we went from his house.

Q. You staid with him in a quarter of a mile of home?

A. Yes, sir.

Q. Does Charley Glass have a family?

A. No, sir.

Q. Did you sleep with him?

A. Yes, sir.

Q. You left home and want over there to sleep with Charley?

A. Yes, sir; he lives with his mother.

Q. You slept with him, did you not?

A. Yes, sir.

Q. Left your women down at home?

A. No, sir; I didn't have any woman.

216 Q. What is your woman's name?

A. I aint got any woman.

Q. What has become of old Salt Face?

A. I guess she is at home.

Q. Didn't you have her?
A. No, sir.
Q. She never did live with you?
A. No, sir. I staid there one summer.
Q. You lived with her?
A. I staid there.
Q. Did you live with her?
A. I made a crop there.
Q. What kind of a crop?
A. Cotton crop.
Q. That is all you cultivated, is it?
A. That is all the land I cultivated.
Q. How far does she live from where you live?
A. Now, about a mile, or near about.
Q. Which side of the creek did she live on?
A. On the east side.
Q. On the same side you did?
A. Yes, sir.
Q. Down the creek below where you did?
A. Yes, sir.
Q. How far from the creek does she live?
A. 'bout 200 or 300 yards; her place runs right close to the creek.
Q. You can see her house from the creek, can you not?
A. It is near the creek.
Q. You can see the house from the creek, can you not; and from the trial on the other side of the creek?
A. I guess a person could if she cleared off this timber in there.
Q. Where did you stay Sunday night?
A. I staid at my place.
Q. What time did you get home Sunday?
A. I went home—I don't know what time it was when I got home.
Q. About what time?
A. About 2 or 3 o'clock when I got back home to my place.
217 Q. Is Charley Glass a white man or an Indian?
A. Cherokee Indian.
Q. Is he any kin to you?
A. No, sir.
Q. You never saw Bood and Sam Morgan together in your life, exce't when you saw them together up at Muscogee Fair?
A. Yes, sir; I have saw them before then.
Q. You said awhile ago, did you not, that you never saw them together except at the fair?
A. I don't remember saying I never saw them together; you asked me, had I saw them together anyways soon, was the way I understood you.
Q. Did you see them together last fall except at the fair?
A. Yes, sir.
Q. Where?
A. In the cotton field picking cotton.
Q. You saw them working together in the cotton field?
A. Yes, sir; at Hoyt's place.
Q. What was you doing in there?

A. I was down in there cow hunting.
Q. You were not hunting pecans, then?
A. No, sir. That was along in the fall; I don't know what time it was.

(Here the court adjourned until 1.30 o'clock.)

218 (*Afternoon session* 1.30 *p. m.*)

CHARLEY GLASS.

Col. CLAYTON. What is your name?
A. Charles Glass.
Q. You are the one they call Charley Glass?
A. Yes, sir.
Q. Where do you live?
A. I live about 5 miles east of Muscogee.
Q. Do you know where the body was found of a man named Sam Morgan?
A. No, sir; I don't know where it was found.
Q. Do you know where Jim Lowry lives?
A. Yes, sir.
Q. How far do you live from Jim Lowry's?
A. I live about a mile and a half.
Q. What direction?
A. It is kind of west from Jim Lowry's.
Q. How far do you live from where the Muscogee road crosses Coody's Creek, the road that runs around by Jim Lowry's?
A. I live about a quarter of a mile.
Q. When did you get here?
A. I got here to-day.
Q. On the train?
A. Yes, sir; I walked from Van Buren.
Q. You came on the train as far as Van Buren, and then walked over here?
A. Yes, sir; I came on a freight.
Q. Do you know Bill Keyes?
A. Yes, sir.
Q. Do you know this defendant here, Bood Crumpton?
A. Yes, sir.
Q. Did you know Sam Morgan in his lifetime?
A. Yes, sir; I was acquainted with him.
Q. Do you remember about hearing of his being missing from the country up there?
A. Yes, sir.
219 Q. When was it?
A. It was on the 3rd day of November.
Q. What day was that?
A. On Sunday.
Q. Where were you on that day?
A. I was on Coody's Creek.
Q. Anybody with you?
A. Yes, sir.

Q. Who was it?
A. Bill Keyes.
Q. What were you doing there?
A. Gathering pecans.
Q. What time did Bill Keyes get with you Sunday?
A. He staid all night at my house Saturday night.
Q. Then on Sunday what did you do?
A. We gathered pecans part of the day.
Q. What time did you get back from gathering pecans?
A. It was along between 12 and 3 o'clock; I don't remember what time it was.
Q. Where did you take dinner that day?
A. Took dinner at home.
Q. Do you know where Keyes took dinner?
A. Yes, sir; he ate at my house.
Q. That day you and Keyes were together?
A. Yes, sir.
Q. What become of him in the afternoon?
A. No, sir; I don't know where he went to; he said he went to a fellow named Davis.
Q. What time was it he left your house, do you know?
A. It was in the evening; I don't know what time it was.
Q. Do you know a man named Maclmee?
A. Yes, sir.
Q. You know him?
A. Yes, sir; I am acquainted with him.
Q. Did you see him that day?
A. Yes, sir.
Q. Where did you see him?
A. I saw him one time at the ford of the creek, and another time up where we were gatherin' pecans.
220 Q. How far did you gather pecans from his house?
A. I reckon about a couple of hundred yards from his house, right by the side of his field fence.
Q. How far from his place were you gathering pecans?
A. I reckon about 200 yards.

Cross-examination:

Col. CRAVENS. When did you first hear that Sam Morgan was gone?
A. I heard it Monday night after they said he was missing.
Q. Where did you hear it?
A. I heard it at home.
Q. Who told you?
A. My mother told me.
Q. Where did your mother learn it?
A. I never asked her.
Q. What did she say?
A. She just told me they had found a dead man; she didn't know who it was.
Q. That was after he was found?
A. Yes, sir.

Q. You didn't hear he was gone until you heard he was found?
A. No, sir.
Q. You never heard about Sam being gone until you heard they had found a dead man; is that the way of it?
A. Well, I asked that fellow one time where he was, and he said he was in Oklahoma.
Q. You did not know that Sam had gone off, did you?
A. No, sir; I never knowed it.
Q. You hadn't heard it until you heard this man was found over there?
A. No, sir; I never heard that he was gone before that fellow told me he was in Oklahoma; I asked him one time—
The COURT. Who told you that?
A. Bood Crumpton.
Col. CRAVENS. When was it you asked him that?
A. I don't remember.
221 Q. About what time?
A. About a week or two before he was found.
Q. You saw him and he told you he was in Oklahoma, did he?
A. Yes, sir.
Q. That was the first you knew he was gone?
A. Yes, sir; that was the first I heard of his being gone.
Q. You didn't know he had disappeared?
A. No, sir.
Q. You hadn't heard of it until Bood told you; that was a week or two before he was found?
A. Yes, sir.
Q. Where was it he told you?
A. I reckon it was about a mile on the other side of Coody's Creek; about a mile, I reckon.
Q. How come him to tell you?
A. I asked him.
Q. What were you doing up there?
A. We was walking along the road.
Q. Were you walking the same way, or did you meet him?
A. We was both going the same way.
Q. Where were you going?
A. To a dance.
Q. Where did you get together?
A. He come by; caught up with me.
Q. That was a week or so before the body was found?
A. As well as I remember, it was.
Q. Where were you going to the dance to?
A. Up to a fellow's house named Herrington.
Q. How far was that from where you lived?
A. About a mile and a half.
Q. You hadn't heard before Bood told you he was gone to Oklahoma, anything about him?
A. No, sir.
Q. How come you to ask him?
A. I just asked him.
222 Q. What did you ask him? Tell us what you said.

A. I just asked him where Sam was.

Q. You just asked him "Where is Sam?"

A. There was three of us walking along, as well as I remember, one of them mentioned Sam's name.

Q. Who was it walking along besides you and Bood?

A. A fellow named John Wych.

Q. Who was it mentioned something about Sam's name?

A. I couldn't tell you who it was; but there was one of them mentioned Sam's name.

Q. Then you asked Bood where Sam was. What made you ask Bood? Why didn't you ask the other fellow?

A. I don't know what is the reason I didn't ask him.

Q. You never heard he was gone until that day?

A. No, sir; I never heard he was gone.

Q. You never heard anything about it?

A. No, sir.

Q. You didn't know when he went away?

A. No, sir.

Q. You didn't hear anything about his going away at all until this time?

A. No, sir; I never heard a word about it until that night when I was going to the dance, some week or two before the body was found.

Q. Do you know what month that was in when the body was found?

A. I don't know only from what they said; I suppose it was in November that the body was found up there?

Q. How long before Christmas?

A. I don't know; they said though that it was found on the 3rd day of November.

Q. Who told you it was found on the 3rd day of November?

A. That was the day.

223 Q. Who told you it was found then?

A. There was no one told me he was found on the 3rd day of November; but this——

Q. How do you know it was found on the 3rd day of November?

A. They said they found him on that day.

Q. Who said they found him?

A. My mother, the first one who told me.

Q. What day was it she told you?

A. She told me they had found a dead man on Sunday before.

Q. What day was it she was telling you about it?

A. Monday night.

Q. It was a week or two before that Bood and you were together to the dance and he told you about Sam being gone?

A. Yes, sir.

Q. That was the first you heard of his being gone?

A. Yes, sir.

Q. You never heard of his being gone before?

A. No, sir.

Q. You never heard anything more of it until your mother told you there was a man found over there?

A. Yes, sir; I didn't know who it was found then.

Q. Who told you that was on the third of November?
A. There was not anybody told me that.
Q. Didn't Bill Keyes tell you it was on the 3rd day of November?
A. No, sir.
Q. Where was you on the 3rd of November?
A. That was the day we was getting pecans.
Q. Were you getting pecans on the 3rd day of November? Are you certain of that?
A. I think that is the date.
Q. You were getting pecans then on the day they found him?
A. Nope.
224 Q. You said they found him on the 3rd day of November, and you were getting pecans on that day? Who told you to come here and tell this tale you are telling?
A. Nobody.
Q. Who did you first tell about being out gathering pecans on the 3rd day of November?
A. I don't remember who it was.
Q. You say you were gathering pecans on the 3rd day of November, you think?
A. Yes, sir; I think.
Q. What day of the week was that?
A. I think it was on Sunday?
Q. Where were you on the 10th of November?
A. I reckon I was making boards all of the next week.
Q. That would be the next Sunday?
A. I don't know; I was making boards all week.
Q. Where was you on the 27th of October, the Sunday before?
A. I was with a man looking for a yearling.
Q. Where?
A. Down in Goose Neck.
Q. Where did you go in Goose Neck?
A. Down on the river.
Q. What was that man's name?
A. Henry Falling.
Q. What day of the week was that?
A. On Sunday.
Q. What day of the month was it?
A. I reckon it was the 27th.
Q. Where was you on the 20th of October?
A. I guess I was around home.
Q. You don't recollect where you were?
A. No, sir.
Q. Where were you on the 17th of November?
Col. CLAYTON. You do not mention to the witness that was Sunday.
The WITNESS. I don't know.
Col. CRAVENS. Where were you on the 10th of November?
225 A. I don't recollect where I was.
Q. Do you know where you were on the 24th of November?
A. Yes, sir.
Q. Where were you?

A. I was hunting a yearling.
Q. Where?
A. No—it was the 24th of October, I was hunging a yearling.
Q. Down in Goose Neck?
A. Yes, sir.
Q. How many days did you hunt the yearling?
A. Two days.
Q. You hunted one day and then hunted the next?
A. No, sir; as well as I remember I hunted one Thursday and the next Sunday I looked around for it; I didn't hunt much.
Q. Who was with you?
A. Henry Falling.
Q. Both times?
A. Yes, sir.
Q. You hunted on Thursday; what day of the month was that?
A. I think it was the 24th of October as well as I remember.
Q. When did you hunt it next?
A. The next Sunday.
Q. Did you make any note of the dates on which you were hunting it, *right* it down, I mean?
A. No, sir.
Q. What time did you get with Keyes—when did you go with him to hunt pecans?
A. We started, as well as I remember—I reckon about 8 or 9 o'clock; I don't know what time it was.
Q. What did you go up there for to hunt pecans in 200 yards of Maclemee's house?
A. I just went up to the patch up next to his house.
Q. Isn't there pecan trees all along Coody's Creek?
A. Yes, sir.
Q. You didn't hunt any until you got to Maclemee's?
A. No, sir; we never got off of our ponies until we got there.
226 Q. What did you do with your ponies?
A. Turned them loose.
Q. How long did you stay there hunting pecans?
A. I don't know; we staid there until about 1 o'clock, as near as I can remember.
Q. What did you take to put the pecans in?
A. I believe we taken a little flour sack.
Q. Whose flour sack?
A. I don't know whose it was; we have got it at home.
Q. Whose home?
A. My home.
Q. Took a flour sack from your house?
A. Yes, sir.
Q. How many pecans did you get?
A. Got about a quart, I reckon; I reckon we got that many.
Q. You got a sack full, did you?
A. No, sir.
Q. You rode four miles, and spent pretty much of the day to get a quart of pecans?

A. That is all we saved; we was eating them.
Q. You eat about a bushel, I suppose?
A. I don't know whether we eat that many or not.
Q. What was Maclemee doing at the ford of the creek?
A. He said he was looking for cattle.
Q. Did he say he was looking for cattle, or a cow?
A. He said he was looking around for his cattle.
Q. What kind of cattle?
A. He didn't say.
Q. Didn't describe it?
A. No, sir.
Q. Was he riding or walking?
A. Riding.
Q. What kind of a horse was he riding?
A. I don't remember what kind of a one he was riding; I never
227 paid any attention to his horse.
Q. You don't know what kind of a one he was riding?
A. No, sir; I couldn't tell you what kind of a one he was riding.
Q. How is it you can pick out the 3rd day of November and no other day, and locate where you were? You didn't write down the day did you?
A. No, sir.
Q. How is it?
A. I heard that that dead man was found on that day; that is the reason I thought about it.
Q. The day you were up there hunting pecans is the day the dead man was found?
A. Yes, sir.
Q. Did you find him?
A. No, sir.
Q. You are certain that you understood it was the day that you were hunting pecans that the man was found, you and Bill Keyes?
A. Yes, sir.
Q. The leaves were off the trees then, I suppose?
A. Some of them was.

Redirect examination.

Col. CLAYTON. Do you remember when the fair at Muscogee was?
A. Yes, sir; I think I do.
Q. When?
A. It commenced on the 22d and ended the 25th.
Q. Of what month?
A. October.
Q. How long after the Muscogee fair was it that you spoke of being up hunting pecans upon this Sunday in November?
A. As well as I remember it was a little over a week, I reckon.
Q. How many Sundays?
A. The second Sunday.
228 Q. The Muscogee fair commenced on the 22nd?
A. Yes, sir.
Q. You say you heard the body was found, and that is what made you think about it?

A. Yes, sir.

Q. I will ask you this, if you heard anything about this defendant claiming that Bill Keyes was along with him at the time that the man left the country?

A. Yes, sir.

Q. Did you hear about that?

A. Yes, sir.

Q. I will ask you if that wasn't what made you think about it?

Col. CRAVENS. Do not lead him that way; that is not competent.

Col. CLAYTON. When did you learn that the defendant was claiming that Keyes was with him?

A. I learned it a day or two after he was arrested, I think.

Q. A day or two after he was arrested you learned that he was claiming that Keyes was with him on Sunday, the first Sunday in November?

Col. CRAVENS. He didn't say it was the first Sunday in November.

Col. CLAYTON. Is that the way of it?

A. Yes, sir.

Q. Then you got to thinking about it?

A. Yes, sir.

Q. That is how you remember it?

A. Yes, sir.

Q And you say it was the second Sunday after the Muscogee fair, which commenced on the 22nd?

A. Yes, sir.

Q. How many days was that fair?

A. Four days, I think.

Q. From the 22nd to the 25'h?

A. Yes, sir.

Q. Ended on what day?

A. Friday, I believe.

Q. 22nd was Tuesday, the 23rd Wednesday, the 24th Thursday,
229 and Friday the 25th, and the next Sunday after that would be the 27th?

A. Yes, sir.

Q. Where were you on that Sunday?

A. I was looking for a yearling.

Q. And the second Sunday is the Sunday you were out pecan hunting with this man?

A. Yes, sir.

Recross-examination:

Col. CRAVENS. Did you go to the fair at all?

A. Yes, sir; I went one day; I went Wednesday and I went Thursday evening late.

Q. What time?

A. It was late, mighty near sundown, Thursday evening.

Q. You went to the fair about sundown?

A. I went to Muscogee; I wasn't going to the fair.

Q. What did you go for?

A. I went for a rope.

Q. What did you want with a rope?

A. I wanted to stake a pony with it.

Q. Whose pony?
A. Mine.
Q. How far did you live from town?
A. I guess it is about 5 miles from town.
Q. What were you staking a pony that time of year for?
A. I didn't wan't to loose him; I had just traded for him.
Q. What day did the fair commence on?
A. On Tuesday.
Q. Why didn't you go then?
A. I was picking cotton.
Q. Why didn't you go Wednesday?
A. I did go Wednesday.
Q. Why didn't you go Thursday?
A. I was helping a fellow to hunt up yearling.
230 Q. You were not picking cotton then?
A. No, sir.
Q. Whose cotton were you picking?
A. A man named Lawson's.
Q. What Lawson?
A. I don't know his name.
Q. Where does he live?
A. On the Arkansas River.
Q. Not that Lawson that lives up on Coody's Creek?
A. No, sir; I don't know of ary Lawson living on Coody's Creek.
Q. Do you know Jim Lawson that is here as a witness?
A. Yes, sir.
Q. Is that the man?
A. His father.
Q. You went with him to hunt the yearling?
A. No, sir; I went with Henry Falling.
Q. I thought it was Lawson?
A. It was Lawson I was picking cotton for.
Q. Where were you picking cotton?
A. Between the river and creek.
Q. What place?
A. About a mile, I reckon; about the mouth.
Q. On what place?
A. On a place Lawson had rented.
Q. Whose place was it?
A. Jim Lowry's place.
Q. That is the same place the man was found in?
A. I don't know whether it was the same place or not.
Q. It was the Jim Lowry place you were picking cotton in?
A. Yes, sir.

Col. CLAYTON. If your honor please, the subpœna for this man Maclemee has not been returned, but here is the precipe, dated the 27th of May, since this case commenced. I sent for these men after I learned from Mr. Keyes that this man was with him. I told the jury I had sent for
231 them and would put them upon the stand. I introduce the precipe.

Col. CRAVENS. (To witness.) Who served this subpœna on you; was there one served?

A. Yes, sir.
Q. Who served it?
A. Ellis West.
Q. When?
A. Yesterday at about 11 o'clock.
Q. Where were you?
A. I was in Ned Smith's field.
Col. CLAYTON. You were not subpœnaed before that?
A. No, sir.
Q. You didn't know you had to come down here?
A. No, sir.
Q. You never saw me before a few moments ago?
A. No, sir; I never saw you until I saw you down in the house, I believe.

WILLIAM MACLEMEE.

Col. CLAYTON. Where do you live?
A. Five miles east of Muscogee, in the Cherokee Nation.
Q. How far from Coody's Creek?
A. A quarter of a mile.
Q. You live a quarter of a mile from where the road crosses Coody's Creek?
A. Yes, sir.
Q. Do you remember when the Muscogee fair was?
A. Yes, sir.
Q. I will ask you if you remember where you were the second Sunday after the Muscogee fair?
A. I was on Coody's Creek.
Q. At your home?
A. Yes, sir; that is my home.
Q. Do you know Bill Keyes and Charley Glass?
A. Yes, sir.
Q. I will ask you if you saw them that day?
A. Yes, sir; I saw them that day at the crossing of the creek.
232 Q. What time of day was that, do you know?
A. Between 9 and 10 o'clock.
Q. Did you see them afterward?
A. Yes, sir.
Q. Where?
A. Right close to home, back of the field.
Q. What were they doing?
A. Picking pecans.
Q. About what time was that?
A. Nearly 12 o'clock at that time.
Q. Back of your field looking for pecans?
A. Yes, sir.
Q. Do you know this defendant here, Bood Crumpton?
A. Yes, sir.
Q. Did you know Sam Morgan?
A. Yes, sir.

Q. Did you see them that day?
A. No, sir; I didn't see them.

Cross-examination:

Col. CRAVENS. What day of the month was it you saw Glass and Keyes?
A. 3rd of November.
Q. Where was you on the 10th of November?
A. I was at home.
Q. What were you doing there?
A. Working.
Q. Working at what?
A. I don't recollect what I was doing.
Q. If you don't recollect what you were doing, how do you know you were working? Where was you on the 27th of October?
A. I was at home.
Q. What were you doing that day?
A. I didn't do anything that day.
Q. How do you know you wasn't?
A. It was Sunday.
Q. What! Were you at the fair?
A. No, sir.
Q. You didn't go to the fair?
A. Yes, sir; I went to the fair.
233 Q. What day? How many days?
A. Four days.
Q. You went every day that it lasted. How many days did the fair last?
A. Four days.
Q. You went every day, did you?
A. I went every day but the 27th.
Q. You went every day of your life but the 27th?
A. No, sir.
Q. What do you mean by every day but the 27th? You went four days, did you?
A. Yes, sir.
Q. Did you see Bill Keyes at the fair?
A. No, sir; I didn't see him.
Q. Did you see Charley Glass?
A. No, sir; I didn't see him.
Q. He wasn't there?
A. He was there, but I didn't see him.
Q. How do you know he was there, if you didn't see him. You are just telling what somebody told you, are you not?
A. No, sir.
Q. You say you saw Charley Glass and Bill Keyes down there on the creek, did you?
A. Yes, sir.
Q. What day was it you saw them there?
A. Third of November.
Q. What day of the week was that?
A. Sunday.

Q. What were you doing down there?
A. I was out riding around that day.
Q. Just riding around?
A. Yes, sir.
Q. What were you riding around for?
A. Going to church.
Q. Did you see them as you were going to church, or coming back from church?
A. Both. I saw them as I was going to church and as I was coming back.
Q. What church did you go to?
A. Methodist church.
Q. Where was it at?
A. Muscokee, in the Cherogee Nation.
234 Q. It wasn't the white church?
A. Yes, sir; it was a white church.
Q. What were they doing when you saw them?
A. They were going when I saw them; when I come back they were picking pecans.
Q. Going towards your house?
A. Yes, sir.
Q. What did you say to them? Did you speak?
A. Yes, sir.
Q. What did you say?
A. I said, good morning, and went on.
Q. What did they say?
A. Good morning.
Q. Were they riding or walking?
A. Riding.
Q. When you came back you saw them at the back of the field picking pecans?
A. Yes, sir.
Q. Did you say anything to them then?
A. No, sir.
Q. Didn't speak to them?
A. No, sir.
Q. How near were you to them?
A. About 100 yards from them.
Q. You didn't go nearer than 100 yards to them?
A. No, sir.
Q. Were you riding or walking?
A. I was walking.
Q. What were you riding?
A. A horse.
Q. What were they riding?
A. Horses.
Q. What kind of horses?
A. Charley Glass was riding a roan and Mr. Keyes riding a gray.
Q. Did you know the horses?
A. Yes, sir.
Q. How far did you live from them?

A. I lived a mile off from Charley Glass.
Q. How far did you liv' from Col. Keyes?
A. A mile and a half.
Q. How close did they live together?
A. About a quarter apart.
Q. When you come back from the church how far were they from where you first saw them?
235 A. I first saw them right close to the field, right close to my house.
Q. When you got back how far were they from that place?
A. About 200 yards.
Q. They had only gone, according to that, about 200 yards while you were gone? Were they riding along the road when you met them first, or was it out of the road?
A. They was riding along the road.
Q. You were in the road too?
A. Yes, sir.
Q. Had they gone nearer towards your house or gone back towards the church?
A. Gone nearer towards the house.
Q. How far were they from your house when you first saw them?
A. They was in a quarter of the house.
Q. How far were they when they were picking pecans?
A. 200 yards.
Q. You didn't speak to them when you come back at all?
A. No, sir.
Q. You just said good morning when you met them the first time; you didn't ask them, how were their folks?
A. No, sir.
Q. Didn't ask them how were their calves, cows, and chickens?
A. No, sir.
Q. You didn't ask them about how their cows were or the calves or the pigs or the horses?
A. No, sir.
Q. Did you say anything about pigs or horses?
A. No, sir.
Q. Did you say anything about the chickens?
A. No, sir.
Q. Anything about the cows?
A. No, sir.
Q. You didn't say a word, only said good morning, and they said good morning?
A. No, sir.
236 Q. You were not out hunting cows that day, or pigs, but just going to church?
A. Yes, sir.
Q. One was riding a gray horse and the other was riding a roan?
A. Yes, sir.
Q. You say it was about 12, I believe*m*, when you saw them there the last time?
A. About 12 when I saw them the last time.

Q. You don't know when they left there, do you?
A. No, sir.
Q. Nor when they went; when they did leave?
A. No, sir.
Q. Did they have any guns that you saw?
A. No, sir.
Q. What were they gathering pecans in?
A. Putting them in their pockets.
Q. They didn't have anything else to put them in?
A. No, sir.
Q. Didn't bring any basket or any sack?
A. No, sir.
Q. Just put them in their pockets?
A. Yes, sir.

Redirect examination:

You say you were about 200 yards away from them?
A. Yes, sir.
Q. Then you don't know what they had with them, do you?
Col. CRAVENS. I reckon he does.
The WITNESS. I could see them plain at that distance.
Col. CLAYTON. Still they might have had a sack around there and you might not have seen it?
A. I didn't see any.
Q. How close were you to them when you first met them?
A. I rode right by them.
Q. When they were gathering pecans you were not nearer than 200 yards?
A. No, sir.

237 Q. When were you subpœnaed?
A. Three o'clock yesterday.

Col. CLAYTON. If your honor please, I have sent for a couple of witnesses, two men who dug the body up, but they have not got here yet. They are only important for the purpose of identifying the body. When they come I want to put them on, and with that exception, I will rest the case.

The COURT. Very well.

Government rests.

This was all the testimony offered by the Government at this time.

238 Thereupon defendant, to maintain the issues upon his part, produced the following witnesses: William Rider, Frank Lawless, John Hurst, Bood Crumpton (defendant), Charley Vann, W. H. Burris. The following is a copy in full of the above-named witnesses:

239 *Testimony offered by the defense.*

WILLIAM RIDER.

Mr. WOLFENBERGER. What is your name?
A. William Rider.
Q. Where do you live?

A. Up here near Muscogeee, Canadian district; about 6 miles from Muscogee.

Q. Which way?

A. Right sue east.

Q. Do you live on the Muscogee road; on the road known as the Goose Neck Bend road?

A. No, sir; I live off of that road.

Q. How long have you been living there?

A. About 12 years.

Q. Do you know the defendant?

A. I do.

Q. Did you know Sam Morgan in his lifetime, before he was missing?

A. Yes, sir.

Q. Do you know where he is no*t*?

A. I suppose he is dead, but I don't know whether he is or not.

Q. When was the last time you saw him?

A. It was during the Muscogee fair, I believe, was the last time I saw him.

Q. I will get you to state, if you know, are you acquainted down in that settlement where Mrs. Harris lived, there on the river?

A. Yes, sir.

Q. Do you know where Mr. Black Hoyt, as they call him, lives?

A. Yes, sir.

Q. How far is that from where you live?

A. I guess about three miles, at the furtherest.

Q. Where was you, if you remember, on November the third?

A. I was out about a quarter of a mile from my place on the prairie, at a little claim I bought.

Q. Did you see anybody there that day?

A. I saw a buggy going by there; between where I was and the field.

240 Q. What road was that buggy on?

A. The road that runs down from my house to Coody's Creek.

(Here the witness was shown a ma*n* by Mr. Wolfenberger, on which map he located his residence.)

Q. How far did you live from the ford of the creek?

A. I live between the two fords; I reckon about half a mile from both fords.

Q. Where was you at the time you saw that carriage coming down?

A. I was right at that little claim.

Q. On what road was that carriage coming?

A. It was on the road coming out from the creek, right here where the crossing of the creek is; there is one road that runs that way and one this way, and it was on this road that runs right by my field.

Q. What time was it you saw it coming down there?

A. Between 10 and 11 o'clock.

Q. Did you see Morgan that day?

A. No, sir.

Q. Did you see anybody in the country over there that day?

A. Just me and the children was out that day——

Q. Did you see any other wagon pass along except that carriage?

A. That is all; I didn't stay out there very long then.
Q. You don't know who was in that carriage?
A. No, sir; I didn't know the persons at all.
Q. Do you know how many were in it?
A. There was a couple in it. I believe that the one setting on the right of the hack as it was going that way [indicating] had on a white hat, and the other had on a black hat.
Q. You are acquainted in that settlement there?
A. Yes, sir.
Q. Been there 10 or 12 years?
A. Yes, sir.
241 Q. Are you acquainted with the Watson place over there?
A. Yes, sir.
Q. Do you know who lives in that field, if anybody does?
A. Watson lives there now.
Q. Do you know who owns the field below there?
A. It is the Sykes field; belongs to the orphan children.
Q. Do you know where the body was found?
A. I know where they said it was found.
Q. Do you know whose field it was found in?
A. The field is known as the Charley Nail farm.
Q. Who owns it now?
A. Jim Lowry.
Q. Is that field all turned up, or is there undergrowth in it?
A. There is undergrowth in it?
Q. Do you know where there is a road that leads, coming from Muscogee, off down in that direction [indicating]?
A. Yes, sir.
Q. Do you know where that road runs to?
A. It runs down in there and stops in Jim Lowry's field; is as far as it goes.
Q. How far is it from where the body was found at the river to the crossing of the creek?
A. About 200 yards.
Q. Did you notice which way the carriage went?
A. It went right along side of the fence there; it was going on down the creek.
Q. Did you see it cross the creek?
A. No, sir; I don't know where it went after it passed my place.
Q. There was two men in it?
A. Yes, sir.
Q. And you think one had a white hat on?
A. Yes, sir.
Q. Do you know how many horses were in the carriage, one or two?
A. I believe there was two.
242 Q. You said it was about ten or eleven o'clock?
A. Yes, sir.

Cross examination.

Col. CLAYTON. Your name is William Rider?
A. Yes, sir.
Q. That was last year, was it?

A. Yes, sir; November.
Q. When did you move to the Indian country?
A. I was raised in there.
Q. Where did you live in 1881 and 1882?
A. In 1881 I was here; right here at this court.
Q. Where did you live after April 15th, 1881?
A. I believe I was down at Detroit, Michigan, then. [Laughter.]
Q. How long did you make your residence down at Detroit, Michigan?
A. Just 20 months.
Q. You were sent there for 2 years, were you not?
A. I believe I was.
Q. For whiskey was it not?
A. Yes, sir; for introducing whiskey.
Q. Is that all you were ever sent for?
A. Yes, sir.
Q. Were you sentenced twice?
A. No, sir; I think not——
Q. Yes, it was 2 sentences. You got out of there in 1882?
A. Yes, sir.
Q. Are you a Cherokee?
A. I am.
Q. You say that was the 3rd day of November?
A. Yes, sir.
Q. Where were you on the 24th day of November?
A. I went after a doctor for a man on that day.
Q. What day of the week was that?
A. Sunday.
Q. Where were you on the 14th of November?
243 A. I don't remember where I was at on the 14th.
Q. Where were you on the 25th of November?
A. I believe I was home.
Q. What day of the week was that?
A. That was Monday, I believe.
Q. Where were you on the 29th of September?
A. I believe I was at home.
Q. What were you doing?
A. I don't recollect what I was doing.
Q. Were you planting corn?
A. No, sir; we don't plant corn in September.
Q. What were you doing?
A. I don't recollect.
Q. What day of the week was it?
A. I don't recollect that.
Q. Where were you on the 13th day of October?
A. I believe I was across the river at home of my brother's.
Q. What were you doing?
A. He was sick over there.
Q. What day of the week was that?
A. No—I was not there that day, I guess, I was at home.
Q. What were you doing?
A. I don't recollect what I was doing; I was doing something though.

Q. What day of the week was that?
A. I don't recollect what day of the week it was.
Q. It was Sunday?
A. It might have been Sunday, I don't recollect though.
Q. I do not think that is much of a fair test myself, but the gentlemen seem to think it was; I just wanted to test it on his witnesses as well as my own, because a man could remember where he was one Sunday and not remember where he was others. Now, then how is it you re-
244 member it was the 3rd day of November that you saw these men?
A. I was up at Muscogee, and I got a letter from my son-in-law, and he was sick, and my daughter was there, and Sunday she started home.
Q. What was the date of the letter?
A. I believe it was dated on the first day of the month.
Q. Were you at the fair?
A. Yes, sir.
Q. You were at the fair when you got that letter?
A. No, sir; I don't believe I was.
Q. What were you doing at Muscogee?
A. We was at Muscogee on Saturday; Saturday evening late.
Q. Have you got that letter with you?
A. Yes, sir.
Q. What did you bring it for?
A. I didn't bring any letter here.
Q. I asked you if you had brought it with you?
A. No, sir; I didn't bring it with me; it was wrote to my daughter.
Q. What kind of looking men were they that you saw in the buggy?
A. They were going with their back to me sort of.
Q. Were they white men, or Cherokees?
A. I don't know.
Q. Why don't you?
A. I didn't pay but little attention to them; it is not an unusual thing to see buggies on that prairie; I see them there very often.
Q. Riding around over the country?
A. Yes, sir.
Q. That was prairie there?
A. Yes, sir.
Q. This buggy was going from towards where the church was?
A. No, sir; it was going sort of from Muscogee.
Q. Did you say it was not an unusual thing to see buggies?
A. No, sir; not on Sunday it wasn't.
Q. That was Sunday?
A. I know it was.
Q. When did you first tell you saw that buggy on the 3rd of November?
A. I don't recollect of telling anything about it.
Q. How was it found out?
A. I don't know.
Q. Did you talk to the defendant about it?
A. No, sir.
Q. I wonder how it is that he filed an application here saying that he could show by you that you saw a buggy on that day?

A. He might have been out there and saw me, but I didn't see him. I don't know anything about it.

245 Q. You say one had a white hat on?

A. Yes, sir.

Q. Who was that?

A. I don't know.

Q. Was he a white man or an Indian?

A. I told you I didn't know whether he was a white man or an Indian; he was nearly two hundred yards from me.

Q. Was it two horses or one?

A. Two horses.

Q. What kind of horses?

A. One looked like a brown and the other like a black.

Q. Which one was the brown and which was the black?

A. The one on the right side, I believe; I don't know which was brown and which was black.

Q. Couldn't you state the color of the one on the right side?

A. The one on the right side I believe was black and the one on the left hand side was brown.

Q. Was it a top buggy?

A. It was one with a top, and you could raise the top up and then drop it back.

Q. Was the top up or down?

A. The top was up when they passed me.

Q. Any white on either one of the horses?

A. I didn't see any; they was going sort of from me when I saw them.

Q. What direction were they coming from; from what place?

A. Just between the ford of the creek and the corner of my field; the road leads down there by my fence and goes on 200 or 300 yards, and they fork; one fork goes down the creek and the other goes up another direction.

Q. Did you see them after they got passed the forks?

A. No, sir; never saw them after they passed across the branch.

246 Q. Do you live on the road that runs from Burris' around here to the ford?

A. No, sir.

Q. You see you have got yourself on that road on this map of Wolfenberger's. What road did you live on?

A. On the road that runs from Muscogee down to my place after it crosses the creek here.

Q. Which way was this wagon going; it must have been going towards the white church?

A. No, sir; it was going down this way [showing on map].

Q. I do not understand this map of Wolfenberger's at all. Look at this map. This is a bet'er one than that. Here is a map that has got some sense to it.

Q. Where does the road you live on come from?

A. Comes from Muscogee and goes down to the ford of the creek, and it goes out and comes up here and goes to Muscogee again.

Q. Then it does not make any difference which way that buggy was going it was going towards Muscogee?

A. I don't know where it went after it left my place.
Q. How far from Joe Harris' did you live?
A. About a mile and a half or mile and a quarter.
Q. Was the buggy going towards Joe Harris' place?
A. No, sir.
Q. What time was it?
A. Between 10 and 11 o'clock. It was between my place and Joe Harris', going right out that way [indicating on map] sort of towards Mrs. Bible's.
Q. Which ford were they going towards?
A. The lower ford.
Q. If they had been going the other way would they have been going towards the other ford, the upper ford?
A. Yes, sir.
247 Q. They would not have been going towards the church?
A. No, sir.
Q. Which way does the road run past your house?
A. It runs right down side of the fence.
Q. Which way?
A. East and west, very near.
Q. Which way was he going?
A. Going out east.
Q. Does the road turn after it gets to your place?
A. It makes a little turn and then goes on; it goes on about 50 yards and then goes a little northeast and goes to the ford of the creek and then it forks.
Q. How far is the ford of the creek from Jim Lowry's place, the upper place?
A. Where the wagons crosses it is about near a mile, I guess.
Q. How far is it from Syke's field?
A. It is near a mile from that place.
Q. It is toward that ford they were going?
A. Yes, sir.
Q. In that direction, if they had kept on going, they would have gone to the creek?
A. Yes, sir.
Q. Was there any roads that forked off there before you get to the ford?
A. I don't believe there is, only a little trial.
Q. How far were you from them?
A. I guess about 200 yards.
Q. Did you see any more buggies that day?
A. I don't believe I did; I went back to the house.
Q. Where do buggies generally go around there when you see them?
A. Sometimes they go to church, and sometimes they come out from Muscogee shooting around there on Sunday.
247½ Q. Did you hear these parties shoot any?
A. I wasn't paying any attention; there was lots of shooting around there that day, but I didn't pay any attention.
Q. Were they hunting?
A. I don't know whether they were hunting or not.

Q. Did you see any dogs?
A. No, sir; I didn't see any dogs or guns.
Q. Did you see anybody else out there hunting that day?
A. No, sir.
Q. What was that shooting?
A. I don't know; people come out from Muscogee and shoot around there.
Q. You can see a buggy almost any Sunday in the fall of the year?
A. Yes, sir.
Q. Sometimes three or four of them?
A. No, sir; I never saw as many as three or four out there at once; I have seen as many as two.
Q. What was there peculiar about this buggy that made you remember it? If you can see a buggy there every Sunday, and sometimes two, why is it you remember that upon this particular Sunday that you saw a buggy?
A. My wife was gone off to the Canadian that day.
Q. If you saw a buggy every Sunday why is it you can remember seeing that one?
A. I said very often there on Sunday you could see them; see one or two, on the other side of the creek.
Q. Could you see a buggy the next Sunday?
A. I believe I did.
Q. Where did you see that one?
A. On the other side of the creek.
248 Q. Did you see a buggy there the Sunday before?
A. I staid at home all that day.
Q. Could you not see them from home?
A. No, sir.
Q. You saw a buggy the next Sunday after that. How many did you see that Sunday?
A. I believe I saw two.
Q. Who were they?
A. I believe one of them was Maclemmee's and the other was Davis'.
Q. Did you know these horses you saw in the buggy?
A. No, sir.
Q. Were they livery horses from Muscogee?
A. I don't know whether they were or not.
Q. Did you take them to be?
A. I supposed they was.
Q. Why did you suppose them to be livery horses?
A. I didn't know whether they were livery horses, as you call them; they were strange horses to me; I just supposed——
Q. Do you know Bill Keyes?
A. Yes, sir.
Q. Was one of these men Bill Keyes?
A. I don't know whether it was Bill Keyes.
Q. You ought to know. Could you not tell whether it was a full-blooded Indian or not? You could tell that one had a black hat and one a white hat; you ought to know whether one was a white man or a black man. Was it Bill Keyes?

A. I don't know.
Q. Did it look like him?
A. No, sir.
Q. Do you think it was him?
A. No, sir.
Q. Why don't you think it was Bill Keyes?
A. I didn't have any idea where he was that day, or nobody else; I wasn't paying any attention to people.
249 Q. It didn't look like Bill Keyes?
A. No, sir.
Q. They were two white men?
A. I didn't say that; I don't know whether they were white men or Indians.
Q. How far was it from the ford that you saw this buggy?
A. I suppose about 200 yards from the ford.
Q. Then it must have been more than a mile and a half from Joe Harris' you saw them. Do you live on the prairie?
A. I live right on the edge of the prairie.
Q. How far is it from Joe Harris' to your house?
A. I suppose about a mile and a half.
Q. Was one of these men who was in that buggy Sam Morgan?
A. I can not tell you.
Q. You knew him?
A. Yes, sir.
Q. If it had been Sam you would have known him, wouldn't you?
A. No, sir; not at that far; their backs was to me, sort as if I was out this way and they over here [indicating].
Q. *You* is it you didn't see them until they got their backs to you?
A. I wasn't looking for them.
Q. Was you looking for them afterwards?
A. I was looking for cattle and I climbed up on that little house and they was between me and the field.
Q. They had their backs to you?
A. Yes, sir; sort of had their backs to me, and the back part of their buggy, it was sort of angling to me.
Q. If you could see the horses good enough to tell one was brown and the other black, why couldn't you see the men?
A. I saw the men, but didn't know who they were.
250 Q. You knew Morgan?
A. Yes, sir.
Q. Was he one of them?
A. I don't know whether he was or not.
Q. What is your opinion? You said you could see the two men?
A. I don't know who they were.
Q. Did you say these men were strangers to you?
A. I said it was a strange buggy to me down there at that time.
Q. "By William Rider he can show that a strange buggy and strange parties were in the buggy in that country that day." Were they strange parties?
A. I never saw these men there before or that buggy there before.
Q. How do you know you never saw them before?

A. I wasn't close enough to tell who they were.

Q. They was so far off you could not tell who they were. A man who has been selling whiskey up there in that country can tell a man 200 yards off, if he could see him?

A. I don't believe he could.

Q. You know whether one of these men was Morgan or not, and I want you to tell it.

A. I don't know whether one of them was Morgan or not.

Q. You knew Morgan?

A. Yes, sir.

Q. You say one of them had a white hat on?

A. Yes, sir; the man on the right side.

Q. Which side was to you, the right or left?

A. Right side.

Q. The man who was next to you had the white hat on?

A. Yes, sir.

Q. Was that Morgan?

A. I don't know; I can not tell.

251 Q. His back wasn't towards you?

A. It was not exactly towards me; as I said, it was kind of little angling between me and them.

Q. Now, then, who were they?

A. As I said before——

Q. They were strangers, weren't they?

A. I suppose they were strangers.

Q. Where were their dogs?

A. Didn't have any dogs.

Q. How do you know?

A. I didn't see any.

Q. What was in the field?

A. Wasn't anything in the field but timber.

Q. What was the fence there for?

A. I had fenced up there the spring before that, and cleared up—to clear up.

Q. What was on the outside of the field?

A. Prairie.

Q. Might there not have been dogs there and you not see them?

A. I wasn't looking for dogs; I was out there looking for cattle; I didn't look at them men but a second before I turned around.

Q. How is it you remember that upon that particular day you saw a buggy there?

A. As I told you before, my daughter's husband was sick, my son-in-law, and my wife——

Q. Who have you talked to about this?

A. Nobody, as I recollect of.

Q. Nobody on earth?

A. I don't recollect of speaking a word to anybody about this.

Q. Never since you were born?

A. I don't believe I did.

Q. Never since this thing happened have you spoken a word to

252 anybody about it. When were you subpœnaed?

A. On the 29th day of March.

Q. I wonder how you come to be subpœnaed.

A. I can not tell.

Q. Nobody knows.

A. I don't know who knows.

Q. You don't know?

A. No sir.

Q. You never told anybody on earth about it?

A. I don't know that I ever told anybody about what I seen out there.

Q. You never told anybody about it?

A. I don't recollect of ever saying anything about it at that time until after I came down here——

Q. Now you begin to crawl out of it.

A. I said that before.

Q. You said you never told anybody about it. Didn't I ask you if you had ever told anybody about it since you were born?

A. I don't recollect anything like that.

Q. Do you not remember of me asking if you told anybody about it since you were born?

A. I don't recollect of answering it that I hadn't.

Q. Of course you told somebody?

A. Before I was subpœnaed I didn't tell anybody.

Q. Why didn't you tell him that before? When were you subpœnaed?

A. On the 29th day of March.

Q. Who did you tell about it after you were subpœnaed?

A. That man over there (attorney for defendant).

Q. "By William M. Rider he can show that a buggy and strange parties were in the neighborhood that day, and other facts and circumstances to show that said Sam M. Morgan was killed by some one other than the defendant." Did he read that to you?

A. He didn't say that.

253 Q. You told me while ago you never told anybody about it?

A. I told you I didn't know that I ever told anybody about it.

Q. You say it was after you come down here; you didn't know what you were brought down here for to prove?

A. No, sir; I didn't know which side I was on.

Q. How did you happen to think back and remember on the third day of N'vember you saw a buggy?

A. I said I was out on the prairie looking for cattle——

Q. How came you to remember that?

A. Because my wife went off that day with my daughter to go to Canadian.

Q. How do you know it was that day?

A. Because I know it was the third.

Q. How?

A. Because she went off to Muscogee; on Saturday evening I got a letter——

Q. Now, Bill, that is an old dodge; you never see the letters produced. I would like for one man who proves something by a letter, to bring that letter here; that is an old dodge. Did you tell this gentleman that you knew it by the date of a letter?

A. I don't believe I did; I believe I told him my wife went to Canadian that day. The letter was dated November 1st.

Q. How is it you remember back and remember the letter was dated November 1st; what makes you remember the date of a letter? That is just as hard to remember as the other?

A. Well, because she was looking for a letter, and my daughter got it, and she said it was dated November 1st.

Q. What makes you remember the date? A. There is nothing important about the date of a letter, is there?

A. I don't know there is anything important about it.

254 Q. That is the way you remember it, because you remember of hearing your daughter say it was dated the first?

A. Yes, sir; my wife and her went the next day to Canadian, Sunday.

Q. That is all you know about it, is it?

A. Yes, sir.

Redirect examination:

Mr. WOLFENBERGER. When you were sent to the penitentiary, you were there 20 months. You were sentenced twice, I believe you said?

Col. CLAYTON. No, he didn't say that.

The WITNESS. I don't recollect whether I was or not.

Mr. WOLFENBERGER. You were sent down there for whiskey, were you not?

A. Yes, sir.

Q. You pleaded guilty to it?

A. Yes, sir; the marshal brought me down here and I come in and plead guilty to it.

Q. Have you been here since?

A. Yes, sir; I was a witness down here once.

Q. When?

A. About 7 years ago, I believe, as well as I recollect; 7 years ago, may be 8.

Q. Do you know this man Rider?

A. I know him when I see him.

Q. Do you know what is occupation is up there in that country?

Col. CLAYTON. You needn't mind answering that. Just let that alone, please.

Mr. WOLFENBERGER. Do you know why he comes down in that bottom?

A. He comes down after wood.

Q. Did you see him down there in the bottom on the third day

255 of November?

A. No, sir.

Q. If he was down there you didn't see him?

A. No, sir; I heard him say——

Col. CLAYTON. How do you know where he said he was?

A. He told me yesterday.

Q. What was you doing talking to him? You were put under the rule.

A. I didn't say a word; he was just telling me.

Q. You were put under the rule?

A. I could stand and listen to a man talk, couldn't I?
Q. No.
Mr. WOLFENBERGER. What did Rider tell you about it?
Col. CLAYTON. I object to that.

FRANK LAWLESS.

Q. Where do you live?
A. I live down here by Bragg's Station, right on the river, Cherokee Nation.
Q. How long have you been living up there?
A. Ever since New Years, on this side of the river.
Q. Do you know this defendant, Bood Crumpton?
A. I have seen him.
Q. Did you know a man named Sam Morgan in that country up there?
A. I saw the man once or twice in my life.
Q. Where did you live last fall?
A. Lived down there in the bottom, about a mile of where I am living now.
Q. Whose place was you living on?
A. Smith's.
256 Q. How far is that from where Black Hoyt lives?
A. It must be 4 or 5 miles.
Q. Where were you living last October?
A. On Jonas Smith's.
Q. How far is that from old man Burris'?
A. About three-quarters of a mile.
Q. He is stepfather of this defendant?
A. Yes, sir.
Q. Do you know where you were on the third day of last November?
A. Yes, sir; I was at home all the time, only I went up on the prairie between ten and eleven o'clock to get some corn for the hogs up there, and look after some cattle.
Q. In what settlement did you go, what place?
A. I did not go at any place, only just——
Q. How far was you from the church house up there?
A. About 300 or 400 yards.
Q. Did you see somebody on the prairie?
A. I saw some people ride across the prairie there.
Q. Did you see a carriage pass there while you were there?
A. There was a carriage on ahead of them that was riding there.
Q. You don't know who it was riding, do you?
A. No, sir.
Q. You do not?
A. No, sir.
Q. How many was riding?
A. I only seen two; I didn't pay any attention to them.
Q. Just tell the truth about it.
A. I was on the prairie feeding the hogs; I didn't pay any attention to them at all.
Q. Which direction was that carriage going?

A. Sort of in the direction of Mucogee like.

257 Q. You say you didn't pay any attention to the men you saw passing?

A. No, sir; I didn't pay any attention to anybody passing at all; I never do when I was on the prairie?

Q. Do you know where Joe Harris lives up there on the prairie?

A. Yes, sir.

Q. How far was that carriage from Joe Harris'?

A. It must have been a mile or more—over a mile, I reckon—from Joe Harris' house up where I saw them.

Q. Do you know any house up on the prairies?

A. Yes, sir; I know where Black Dog Lowry lives up there, and the old house that was blown down.

Q. How far was Black Dog Lowry's place from where you were standing?

A. I reckon it was 300 or 400 yards. I never measured it. It was right smart little piece.

Q. Do you know a lady on the prairie by the name of Mrs. Bibles?

A. Yes, sir.

Q. Was it going in the direction of her house?

A. Yes, sir.

Q. Do you know what kind of horses they had when they was riding there?

A. I didn't pay any attention to the horses; I just noticed the men riding across the prairie.

Cross-examination:

Col. CLAYTON. Is your name Frank Lawless?

A. Yes, sir.

Q. What day of the month is this?

A. I don't recollect what day of the month this is.

Q. Do you know what day of the month Christmas comes on?

A. Sometimes I do; sometimes I don't.

258 Q. What day of the month did Christmas come on last year? Was it the third of November? What day of the month did Christmas come on last year?

A. I am no scholar; I don't know.

Q. Do you know what day of the month the 4th of July comes on usually?

A. It comes on the 4th, I reckon. [Laughter.]

Q. On the 3rd day of last November you went out to feed some hogs. You know what day the 3rd day of November comes on, do you not? How do you know where you were on the third day of November last?

A. I know I was out on the prairie feeding my stock and that is all I know anything about it. I would not swear it was that day of the month.

Q. All you know is, sometime along last fall you was out on the prairie?

A. I was out there Sunday.

Q. There wasn't a Sunday but what you saw people riding across the prairie?

A. I hardly ever was on the prairie without I seen some parties crossing the prairie, carriages and horseback both.

Q. You could always see carriages, could you?

A. No, sir; there is a mighty few carriages in that country. You could see wagons and horsebackers.

Q. What kind of a carriage was that you saw there?

A. I was a mile from there. I can't tell anything about a carriage at a mile. It might have been a wheelbarrow.

Q. Can you not tell the difference between a wheelbarrow and a carriage at that distance.

(No response.)

Q. Are you certain it was a carriage?

A. I seen a hack or a carriage or wagon go across there.

259 Q. It was either one of them or a wheelbarrow; was it a hack you saw?

A. It looked to me like a hack; I was three-quarters of a mile from it.

Q. Was it a two-seated or four-seated hack?

A. I could not tell you that far off.

Q. What was your judgment?

A. I never paid any attention to it.

Q. Did it have a white top or a black top to it?

A. It did not have any top to it at all. Didn't have any top on it that I seen.

Q. Four or five men in it?

A. No, sir; only one man in it that I seen in it.

Q. Only one man in the hack?

A. That is all I seen in it.

Q. Was it a white man or an Indian?

A. I could not tell you that far off.

Q. Any women in the hack?

A. I never seen none.

Q. Was that man Sam Morgan?

A. I don't know; I couldn't tell you for I do not know.

Q. I will ask you if on the afternoon of the day that Morgan was missing, on the third day of November, you saw this man, the defendant?

A. I took him to be them; I don't know whether it was them.

Q. I will ask you if you saw him alone?

A. No, sir.

Q. And afterwards saw Morgan, the deceased, and another man and two women riding in a buggy together?

A. No, sir.

Q. Did you see anything of that kind?

A. No, sir.

Q. See the defendant alone and afterwards see Morgan, the deceased, and an unknown man and two women riding in a buggy to-

260 gether?

A. No, sir.

Q. Didn't see anything of that kind?

A. No, sir.

Q. Your name is Frank Lawless?

A. Yes, sir.

Q. That is not true, is it, that you met this defendant upon that day by himself, and then saw Morgan——

A. I never said I met him at all; I never met him at all; I took them to be riding across the prairie about a mile from me.

Q. You could not tell anything about who the men were?

A. No, sir; I couldn't tell who they were.

Q. How far were you from the white church when you saw these men?

A. Well, sir; I was up at that old house of Lowry's that is blown down.

Q. How far from the white church?

A. Three or four hundred yards.

Q. In what direction from the white church?

A. Out east like.

Q. East from the white church?

A. Kind of east.

Q. Were you on any road?

A. No, sir; there is no road there at all.

Q. Which direction did you look when you saw them? Were they on the Muscogee road?

A. They were on the road going from Mrs. Harris' towards Muscogee.

Q. What direction were you looking?

A. I was standing here feeding my hogs looking towards Mrs. Bibles'.

Q. Did the road run east or west of you?

A. Kind of west.

(Witness locates where he was standing and which direction he was looking, by pointing on a map shown him by Col. Clayton.)

261 Q. Did that road that goes to Muscogee run right straight up to Muscogee?

A. No, it crooked around a good deal.

Q. Did it go up by Joe Harris'?

A. Yes, sir; there is one road that does.

Q. Were they on the road that went by Joe Harris' field?

A. They were on the road that went on the north side of his field, is the way I would call it; I don't know how you have got it on the map; that is the way I would call it.

Q. Do you know where Joe Harris' field is?

A. Yes, sir; he has got one down here (indicating on map).

Q. Were they on this road (indicating)?

A. No, sir; they were on the road that goes across here. They wasn't on the road he lives on; they were on this road here that runs from Mrs. Harris'.

Q. Were they in the road?

A. Yes, sir.

Q. You could not tell who these persons were?

A. No, sir.

Q. You only saw one person in the hack?

A. No, sir.

Q. Could you tell the color of the horses?

A. No, sir.

Q. Do you know whether it was a hack or a wagon?

A. It looked like a hack to me; I wouldn't swear it was a hack.

Q. Was it one of these top buggies?

A. No, sir; didn't have any top on it at all.

Q. Was it not one of these buggies with the top down?

A. No, sir; one of these common hacks, a spring wagon, or as I call it, a hack.

Q. When was that?

262 A. It was on Sunday I saw it, between 10 and 11 o'clock.

Q. What Sunday was it?

A. It was a time they had church there, one of the church days.

Q. What Sunday was it?

A. I disremember——

Q. Was that the first Sunday in November?

A. I don't remem'er the day of the month.

Q. Which comes first, October or December?

A. Sometimes October comes first.

Q. Which come first last year, October or November? I am talking about last year; not this year.

A. I reckon November come first, didn't it?

Q. Yes, it come first last year, but it don't every year?

Q. If November come first last year it was before October. You saw this wagon, if you saw it, on the third of November.

A. I wouldn't say for certain——

Q. I want to know whether it was before or after October you saw them; you put them in November, and that comes before October?

A. I wouldn't say whether it was before October or not.

Q. Wasn't it after October you saw them? Look here—did you see them at all?

A. I told you I wouldn't swear I saw them at all.

Q. Were you there?

A. I was there and saw a wagon go across there, or a hack, but I wouldn't swear——

Q. You are sure you were there?

A. Yes, sir; I am sure I was there feeding the hogs and looking after some yearlings.

263 Q. What hogs was it you were feeding?

A. I was feeding mine.

Q. How far were you from home when you were up there?

A. About a mile or a mile and a half; they run on the prairie all the time. I only had one up there.

Q. I want to ask you a question, and I want you to tell me when it was; now, when was it?

A. I wouldn't say the day of the month, for I am not certain.

Q. How high was the corn then; was it in roasting ear?

A. I suppose corn was all ripe; it ought to have been ripe; it looks to me like it was ripe.

Q. Was it ripe?

A. Mine was; I don't know how the other people's was.

Q. What time does your corn get ripe?

A. It is too hard for roasting ears in August.

Q. Was yours too hard for roasting ears?

A. Yes, sir; I had corn for roasting ears in July.

Q. Had corn got too ripe for roasting ears when you saw this miraculous wagon going over the prairie?

A. Yes, sir.
Q. How long was it before the Muscogee fair? Were you at the fair?
A. No, sir.
Q. Was it after the fair you saw this wagon?
A. Yes, sir.
Q. How long after, the second or first Sunday?
A. It was the first Sunday.
Q. Are you certain of that?
A. I know it.
Q. Now you see we are getting down to it. How do you know it was the first Sunday after the fair?

264 A. I had a woman hired there; she was staying at my house; and she wanted to go home after the fair was over, and she staid during the fair time waiting on my wife, and wanted me to set her across the river Sunday after the fair.

Q. If the fair closed out on Friday, it was the next Sunday you set her across the river?
A. Yes, sir; I set her across the river in the morning, and then come back home and got my horse and went up there on the prairie.
Q. That was the Sunday after the fair week?
A. Yes, sir.
Q. The fair closed on Friday, and that was the next Sunday?
A. Yes, sir.
Q. That is the way you know it?
A. Yes, sir.
Q. There is some sense in that. Wasn't it the second Sunday after the fair?
A. It was the first Sunday after the fair.
Q. I understood you to say while ago it was the second or first Sunday. Might it not have been the second Sunday?
A. I know by this woman.
Q. You know then it was the first Sunday after the fair. The first Sunday after the fair was the 23rd of October, so it wasn't the third of November, was it. I want to deal fairly with you here now. You were mistaken when you told Mr. Wolfenberger here that it was the 3rd of November, were you not? It was the 27th of October, a week before that, you saw the hack. You are going to stick to it, are you not? Can you not manage to get it on the third, get it a week later?
A. I don't know what you might do.
Q. Of course you have got to stick to the truth; I know you will do that?

265 JOHN HURST.

Mr. WOLFENBERGER. What is your name?
A. John Hurst.
Q. Where do you live when you are at home?
A. I am living now in Coo-wee-scoo-wee district, Cherokee Nation.
Q. How long have you been living in that country?
A. Been living there about ever since the 28th or 29th of December.
Q. Where were you living last fall?

A. I was living in the Canadian district with a man by the name of John Watson.

Q. Is that on the Arkansas River?

A. Yes, sir.

Q. How far from Muscogee?

A. They call it five miles.

Q. Were you living on the main road?

A. It is about something near between 300 and 400 yards from the main road.

Q. What were you doing up there?

A. I was picking cotton for Mr. Watson.

Q. Did you make a crop for him?

A. No, sir; I didn't make any crop.

Q. What time did you commence picking cotton for him?

A. I commenced picking cotton about the first or second week in October.

Q. Are you acquainted in that settlement there?

A. Yes, sir; I was tolerably well acquainted in that settlement.

Q. Who are you living with in the Coo-wee-scoo-wee district?

A. A man by the name of Williams.

Q. You say you went up there about December some time?

A. Yes, sir; we started up there the next day after Christmas; it taken us a couple of days to get there; I have been there since
266 until I come here.

Q. Are you acquainted with this defendant?

A. Yes, sir; I have met him several times.

Q. Are you acquainted with Mr. Morgan, the deceased?

A. Yes, sir; I knew him.

Q. Whose farm joined Mr. Watson's farm there?

A. The Jordan farm.

Q. Who tended that farm last year?

A. A man named Davis had it rented.

Q. What is the next place below that?

A. The Sykes field.

Q. Who tended that last year?

A. A fellow named—I can not think of his name right now; an old fellow kept batch there. I don't know who had the main part of it rented.

Q. Do you know where Mr. Lowry's field is there?

A. No, sir; I never were down that road.

Q. You don't know where that is?

A. No, sir.

Q. You know where the ford of the creek is there?

A. Yes, sir.

Q. How far does Mr. Watson live from that ford?

A. It must be something near—well, a little over half a mile.

Q. Where were you on the first of November?

A. I was staying there at Mr. Watson's.

Q. Where were you on the first Sunday in November?

A. I was there at Mr. Watson's in the forenoon and went down on the creek, and I and a feller named Haller was talking of setting out some

trout lines, and I went down there to see if I could get a place to set a net to catch some small fish for bait; I went down there by myself.

267 Q. What time did you get back?

A. About 11 o'clock.

Q. Did you see anybody while you were gone down there?

A. No, sir.

Q. Did you see anybody after you got back?

A. No, sir; not for a right smart little bit; it was after 12 before I saw anybody.

Q. Who did you see?

A. I saw four men pass there; one I taken to be Mr. Burris, one Sam Morgan, and Charley Glass, and the other I couldn't say who he was; he was riding on the far side.

Q. Who did you take it to be?

A. I taken it to be a fellow named Brown, with them; that is who I taken it to be. The 4th man I took to be Mr. Brown.

Q. What made you think it was Morgan and the defendant over here?

A. As a general thing they were together every Sunday, riding around the country; I saw Mr. Morgan's horses; I recognized them more from the horses than I did the men.

Q. How far were you away from them?

A. Something near 200 yards.

Q. You could not say certain you saw Mr. Morgan——

Col. CLAYTON. Let him testify himself.

Mr. WOLFENBERGER. Do you know what kind of clothing they had on?

A. They had on light looking clothing; only the man riding on the far side; he was dressed in dark clothing.

Q. What time of day was it you say you saw them?

A. Between 12 and 1 o'clock; about half after twelve.

Q. What were they doing up there?

A. Riding up the road towards Davis'.

268 Q. Did you speak to them?

A. No, sir.

Q. You say you knew the horses?

A. Yes, sir; I knew Glass' horse and Morgan's.

Q. How far were they from the ford of the creek when you saw them?

A. About half a mile.

Q. Which side of the creek?

A. On the west side.

Q. Next to Muscogee?

A. Yes, sir.

Q. Do you know what kind of hats they had on?

A. There was three in the crowd that had on white hats; and one I taken to be Mr. Morgan rode a spotted horse and had on a black hat.

Q. Did you ever see Mr. Morgan's horse before?

A. Yes, sir.

Q. Were you acquainted with the horses?

A. Yes, sir.

Q. Did you see them any more that day?

A. I saw Mr. Morgan and a gentleman about 2 hours by sun; I never saw anything of Mr. Burris or Mr. Glass or the other man that was with them, that I know of; I saw Mr. Morgan and a gentleman in a buggy about 2 hours by sun.

Q. Where was you when you saw them?

A. I had been out along the side of the Sykes field on the prairie there; I met them right at the crossing of the road; they were going down towards Muscogee.

Q. Did you speak to them?

A. Yes, sir; I did.

Q. You are certain Mr. Morgan was in the carriage?

A. Yes, sir.

Q. Who was the other gentleman with him, do you know?

A. He introduced him to me as Mr. Burt.

Q. Would you know Mr. Burt if you would see him?

269 A. I think I would if he was in the fix he was in when I saw him.

Q. Which way did you say the carriage was going?

A. Going towards the bend, going Snake Bend.

Q. Did you know which way that carriage went when it crossed the creek; did it go down in the creek?

A. It went right straight on down the road from me, right straight down the main road.

Q. Tell all you know about where the carriage went to, and how you know it.

A. All that I saw, as far as I noticed the carriages—I just passed on after they passed on; that is the way they went on; I went on over there to the house, and knocked around there; I never noticed; I couldn't tell which way the carriage went from there any further than that.

Q. Did you go down in the field next day?

A. I was down in the field next day.

Q. Did you see any buggy tracks down there?

A. I seen some buggy tracks right down by the bars and went outside about 20 steps below the bars, and turned out and went to the creek.

Q. Was that below the ford of the creek?

A. Yes, sir.

Q. Do you know where the body was found?

A. I suppose it was found—I heard it was—down below there something near half a mile.

Q. The buggy tracks were going in the direction of where the body was found?

A. Yes, sir.

Q. When did you next see that buggy, if you saw it at all?

A. The next I saw it it was going back towards Muscogee.

Q. What time was it?

A. Between sundown and dark.

Q. Do you know who was in that carriage?

A. No, sir.

270 Q. How many were in the carriage?

A. One man was all.

Q. What time was that?

A. It was between sundown and dark.

Q. Did you have any conversation with them up there when you met them there in the road?

A. I just met them and spoke to them, and asked Sam how he was getting along, how they were getting along down in the bend, and asked him if they had been up prospecting; he said no; we have been to take some girls home out the other side of Muscogee.

Q. You were well acquainted with Sam Morgan, I suppose, was you?

A. Yes, sir; I was toleberly acquainted with him.

Q. You know it was Sam you met there that day?

A. Yes, sir.

Q. What day was that?

A. It was on the third of November, Sunday.

Col. CRAVENS. Where had you been when you saw these two men in the carriage?

A. I had been walking up on the prairie there along by the side of the field.

Q. Were you in the road?

A. Yes, sir.

Q. In the same road they were in, or in a cross-road?

A. I was on the cross-road.

Q. The road that crossed the one they were in?

A. Yes, sir.

Q. You met them where the roads cross?

A. Yes, sir; right at the crossing of the roads.

Q. What did he say about this man he introduced to you as Burt?

A. He just introduced him to me as Mr. Burt.

Q. Did the carriage stop?

A. Yes, sir; stopped a few minutes.

Q. Were you riding or walking?

A. I was afoot, walking.

Q. He introduced him to you as Mr. Burt; what sort of a looking man was he?

A. He was a low, chunky built, dark complected man.

271 Q. Did he wear whiskers?

A. Yes, sir; had beard struck him about here (on breast).

Q. What kind of beard?

A. Black.

Q. You had never seen him before?

A. I saw the same man before, about two weeks before that, up on the prairie, coming from towards a ferry up there; the same man that was with Mr. Morgan.

Q. When they passed on you went on to Watson's, did you?

A. Yes, sir; I went on to the house from there.

Q. You were going across this way and they were going that way, down the creek?

A. Yes, sir; they were going down towards the creek.

Q. The road they were on run down to the ford?

A. Yes, sir.

Q. Do you know whether the buggy crossed the ford or not?

A. No, sir; I don't.

Q. How do you know it didn't cross the ford?

A. I don't; I don't know that it didn't cross the ford.

Q. You say you saw a buggy track and followed it out a little west from the ford. Was that above or below the ford?

A. It was below the ford.

Q. Then they must have gone below the ford; the buggy did.

A. It might have been it was somebody elsse's buggy.

Q. If it was that buggy it went below the ford?

A. Yes, sir.

Q. You don't know whether it was the same buggy or not, of course?

A. No, sir.

Q. How far below the ford was it you saw the tracks the next day?

A. It may have been between a quarter and half a mile below the ford.

272 Q. You know where the body is said to have been found?

A. Yes, sir.

Q. About how far was it from where you saw these tracks to where it is said the body was found?

A. I don't know exactly.

Q. About?

A. I never have been any lower down than the upper corner of that Sykes field where the creek and river comes very near coming together.

Q. (Witness is shown a map.) What place were you at?

A. I was at where Jim Watson lives.

Q. The Sykes field was below that, was it?

A. Yes, sir; it was below that, on the creek.

Q. How long had you been at work with Watson, or had you been there?

A. I had been at work there ever since about the second week in October.

Q. Where were you when you saw the four men riding on horseback?

A. I was standing on the gallery at the house.

Q. Where is the house?

A. In the field.

Q. How far from the fence?

A. It is very near 200 yards.

Q. How far were the men from the fence?

A. They were right close to the house; come up right close to the gate.

Q. They were going up the creek; going up west?

A. They were going up the river.

Q. You were not nearer than that of these men?

A. No, sir.

Q. That evening, afterwards, you saw this buggy out here where your road crossed that?

A. Yes, sir.

Q. The next day, when you went out there, whereabouts was it from the Watson field that you saw the buggy tracks?

273 A. Down next to the creek, on the lower side?

Q. With reference to the Watson field. Was it down between the Watson field and the Sykes field, or how was that?

A. Right along by the Watson fence.

Q. Between the Watson fence and the creek?

A. Yes, sir.

Q. Did you go any lower down than the lower end of Watson's field?

A. I didn't go down to the lower end of Watson's field that day.

Q. The buggy tracks were about 20 steps below the bars, and then turned out; where are the bars?

A. On the east side of Watson's field.

Q. On the southeast?

A. It is right smart little piece down there; it is nearer the northeast corner than it is the southeast.

Q. They turned out of the road and went towards the creek——

A. They went below the bars and went towards the river.

Q. You followed the buggy tracks, I believe you say, out of the road some distance down to the bank of the creek?

A. Yes, sir.

Q. Did they cross the creek there?

A. I couldn't see any sign where they went to from there.

Q. The party in that carriage that evening, one of them was Sam Morgan?

A. Yes, sir.

Q. You spoke to him, and he introduced this man that was with him, by the name of Burt?

A. Yes, sir.

Q. What time was that?

A. About 2 hours by sun, in the evening.

Q. You say you saw that carriage go back, or some carriage go back; how near were you to it?

274 A. I was standing at the gate, it must have been something near—well, a little over 100 yards or 150.

Q. Which way did the carriage go then?

A. It was going back up towards Muscogee.

Q. Went back up west?

A. Yes, sir.

Q. Was that the same way it come from when you saw it?

A. Yes, sir.

Q. Was there one man or two men in the buggy?

A. I didn't see but one when they were coming back.

Q. Do you know which one that was, or who that was?

A. No, sir; I don't.

Q. I will ask you if you noticed the hat that the party wore who went back, what color hat it was, as he went on back up the road?

A. I think he had on a white hat.

Q. What time was it, now, that you saw the carriage or buggy going back west towards Muscogee?

A. It was between sundown and dark.

Cross-examination:

Col. CLAYTON. You think you would know Mr. Burt if you would see him?

A. Yes, sir; I think I would.

(To bailiff.) Bring Mr. Burt in.

275 Q. Did you say Charley Glass was along?
A. Yes, sir.
Q. Do you say Keyes was along?
A. No, sir.
Q. It is the man that is here?
A. Yes, sir.
Q. What was the color of his horse?
A. A gray horse.
Q. (Producing Will Burt). Is that the man?
A. He resembles him right smartly.
Q. You said you would know him?
A. Yes, sir; he is the man.
Q. What time of day was it you saw him?
A. About 2 hours by sun.
Q. That is, the sun was about 2 hours high?
A. Yes, sir.
Q. How long was his whiskers?
A. Down about there.
Q. (Producing Charley Glass). This is the man you speak of as being down there?
A. Yes, sir; that is the man. I saw his pony in the crowd.
Q. What time of day did you see him?
A. Between 12 and one o'clock. He is the man I taken to be riding his pony.
Q. What kind of a pony was Glass riding?
A. A gray pony.
Q. Was Frank Lawless with you?
A. No, sir.
Q. It is not true, then, that you and Frank Lawless were together on Sunday that deceased Morgan was said to have been killed,
276 and that you and Frank saw Morgan and another party, that you did not know, get in the buggy and go in the direction of the killing?
A. No, sir; Lawless was not with me.
Q. Where were you when the body was found?
A. Down there in Goose Neck bend at Mattie Harris'.
Q. They are relations of this man?
A. Yes, sir.
Q. Where are you living now?
A. Up in Going Snake district, with Ed. Williams.
Q. What relation is Ed. Williams to the defendant?
A. Not ant at all.
Q. How long have you been living with Williams?
A. Ever since along in December last.
Q. Where did you say you lived when the body was taken up?
A. I was staying there with Kit Harris at Mrs. Harris'.
Q. When did you first hear the body was found?
A. On Sunday evening.
Q. Who did you hear it from?
A. and Mr. Robinson.
Q. Where were you?

A. At Ed. Williams', that is close to Harris'.
Q. Did you see the defendant that evening?
A. No, sir.
Q. Did he stop at Mrs. Williams' that evening?
A. No, sir; let us see, I staid at Sunday night, I think.
Q. What was staying at Williams'?
A. I said when the body was taken up, I was staying at Williams'.
Q. You said something about staying at Williams the night the body was found?
A. I don't think I did.
Q. Well, you did.
A. No, sir; I think not; I said I was standing there at Williams' gate when I first heard of it Sunday evening.

277 Q. Everybody seemed to know it, talking about it a good deal that evening?
A. They were talking about it a little.
Q. What became of the defendant that night, do you know?
A. No, sir.
Q. He left the country, didn't he, run off?
A. Well, he staid all night there, I suppose, at Mrs. Harris' on Sunday night and on Monday morning he went across the river.
Q. Did you see anything more of him?
A. No, sir.
Q. When was it you heard it was probably Sam Morgan's body?
A. It was after it was taken up.
Q. Where were you then?
A. Staying with Kit Harris at Mrs. Harris'.
Q. What did you follow that buggy track for next day?
A. I just 'lowed the young man had some whiskey, and maybe he hid it out, and I would go down and find it.
Q. When did you first tell this thing?
A. In January.
Q. Who did you tell it to?
A. To Ed. Williams, and I told it to Kit Harris after that
Q. How long after?
A. It was here along in April.
Q. Anybody else?
A. Nobody but Jim Burris.
Q. This is his step-father?
A. No, sir.
Q. What relation is he to him?
A. I don't know whether—he aint no relation, I guess, only he married a cousin of his.
Q. When did you tell Jim Burris?
A. The same time I told Kit Harris.
Q. You heard 2 or 3 days after the body was taken up that it was Sam Morgan's; did you know Morgan well?
A. Tolerably well acquainted with him.

278 Q. Why, when you found out it was Morgan's body, and that he had been probably murdered, why did you not tell this thing to these men to go down there? What did you keep it to your-

self for; I want to know why it is you kept this thing a secret so long after you learned that the man had been murdered right in the community where his relatives were living?

A. I knew it was not healthy for me to say anything about it down there.

Q. Why?

A. They centered on that young man there.

Q. That is the only a stronger reason why you should say it, because you would save an innocent man. Why not tell it?

A. I never heard of a man being punished on circumstantial evidence.

Q. Then you were not afraid to tell it—probably you will hear of it before you are many years older. Why did you not tell it, and not lock it up a secret in your breast? Put down your hand and square yourself up and answer the questions. In the name of common sense why did you keep it a secret?

A. I don't know I kept it a secret.

Q. According to the information I get from you, you kept it a secret. You never said a word about it until about January. Why did you not make it known that this man Burt was the man went in that wagon?

A. I was off from the bend; I wasn't with these gentlemen here.

Q. Yes, you were. At the time you learned this man was Sam Morgan you were staying at Mrs. Harris'?

A. Yes, sir.

Q. Why did you not tell it then?

A. I didn't have any chance to tell it to Morgan or Burt, for he was right there hunting this gentleman. I wasn't with Morgan.

Q. Why didn't you hunt him up, and if you didn't want to hunt him up, to tell the neighbors about it?

A. I didn't have to go to hunt him up.

Q. Can you give a reason for your peculiar conduct?

279 A. I have given a reason; I told you I was away from there; I started off next day after the body was found.

Q. No; you staid there until the body was taken up; that was 2 days after it was found, and you understood that it was Morgan's body. You were still at Mrs. Harris'; I made you swear to it. Why did you leave, then?

A. I started with Williams to take care of his cattle and hogs. I told him about it.

Q. You didn't tell him until January?

A. I told Williams and Kit Harris, or gave them a hint of somebody being in a buggy with the man.

Q. What did you say when you give them a hint?

A. I told them it could be very liable that Sam Morgan could have been in the buggy with the gentleman that Mr. Burris said he was with.

Q. Where were Williams and Kit Harris then?

A. They were going up in the Coo-wee-scoo-wee district in a wagon.

Q. That was the next day after the body was taken up?

A. Yes, sir.

Q. What day of the week was that?

A. That was on Thirsday.

Q. Now, how near to Christmas, was it?

A. It was after Christmas; on Thursday after Christmas.

Q. The body was taken up before Christmas, on Tuesday. You did not go off on Christmas day, did you?

A. No.

Q. Then there was one day you were there before you went off. Christmas day was Wednesday, and Thursday you went off.

A. Wasn't the body taken up on Christmas morning?

Q. No, sir; the day before Christmas; at least that is what everybody says. Don't you remember on Christmas morning you were at Grider's?

A. Yes, sir.

Q. And Bob Morgan was there?

A. Yes, sir.

280 Q. And Colquitt passed there or stopped there. Why did you not tell the brother of the murdered man? You know who the murderer was. You said you had him to hunt up.

A. When did I say it?

Q. You stated that.

A. I said I wasn't with Mr. Morgan.

Q. You gave Williams and Harris a hint the day after the body was taken up; that is, the day after Christmas. I want to get your declaration down correctly.

A. It was the day we started to Coo-we-scoo-wee district I gave them the hint.

Q. You said it might be proven a man was in the buggy with Sam Morgan?

A. Yes, sir.

Q. That is all you said to them at that time?

A. Only I told them about seeing them men pass there on horseback.

Q. Is that what you mean by giving them a hint? What do you mean by telling me you told Ed. Williams this in January and then Jim Burris and Kit Harris in April, and you never told anybody else?

A. Yes, sir; it was in January when I told Williams and April when I told Kit and Jim.

Q. You say you didn't tell him the whole thing, then?

A. No, sir.

Q. What were you hinting about? Why not tell it all?

A. All I said to them was, they were telling me about Crumpton speaking about a man and Sam getting in the buggy and going off to the Pawnee Agency with the man; and I told them it might be Crumpton's statement was true about that, about him getting in the buggy.

Q. That is the hint you gave them?

A. Yes, sir.

Q. Why did you not tell them you knew it? What reason had you to keep it back from Ed. Williams and Kit Harris, both of them related to the defendant?

281 A. I knew he would have me subpœnaed anyway.

Q. Why not tell them then? You were not afraid of them knowing? Why did you not tell Morgan when you saw him on Christmas day after his brother was taken up there?

A. Morgan never appeared as if he wanted to talk to me.

Q. Why did you not talk to him? It was your place to talk to him.

A. I was right at Grider's, and him and Grider was talking, and as a general thing I never put in when other men are talking.

Q. I observe that you don't; that you look to be tolerably secret when you could save a man from the gallows. Give a reason why you did not tell that thing?

A. I have stated to you just as plain as I could.

Q. Let us have it again; I have not heard no reason yet.

Q. Did I not tell you that I was away from home; I started away the next day?

Q. No; you told me you started away after Christmas, and you saw Morgan on Christmas day over at Grider's after you knew that was his brother and after you knew he had been murdered.

A. Was it the witness' place? It was his place to work around and find out who was a witness.

Q. How in the name of common sense was he to get witnesses if the witnesses locked the secret up and would not tell anybody?

A. He was acquainted with me.

Q. He didn't know that you knew anything.

A. Well, he run around the country asking others. Why didn't they come to me and ask me about it?

Q. Because you never let anybody know what you knew.

A. They knew, both of them; Morgan knew I was living close
282 to where the body was found.

Q. How do you know they were running around the country asking people?

A. I heard different men say they came to them and asked them.

Q. Then you were talking to different people about it. Now, if you were, why did you not tell them about it? In other words, what was the cause for it being kept a secret? There must be some reason, and I want to know what it was, even if you wouldn't tell this man; if you felt hurt because he wouldn't come to you and ask you what you knew, there was somebody else you could have told it to. Do you undertake to tell this jury that what you have said if true, and that you locked that secret up all this time?

A. Yes, sir; I say it is true.

Q. Then give me a reason for your conduct. You did not kill the man—did you kill the man?

A. I don't know I done anything out of the way—no, sir; I didn't.

Q. Did you have anything to do with the killing of this man?

A. No, sir.

Q. If you did, I can see why you kept it a secret.

A. I don't know I have kept it a secret at all. Didn't Mr. Williams write down to Col. Cravens about finding a man that would testify to this thing?

Q. I expect he did, and I expect Williams did find a man—a man that didn't find Williams. I think you must be right about that, although I know nothing about that, and I would judge you would be the man he would try to find from your appearance now. Go on and answer my question.

A. I have tried to answer your question to the best of my knowledge.

283 Q. How long were you with Grider after the body was taken up and known to be Sam Morgan's?

A. I wasn't there over half an hour or two.

Q. Why did you not tell Grider?

A. Him and McDaniel was talking about it.

Q. Everybody else seemed to be talking about it except you? A man murdered right there, known he was murdered, and everybody talking about it except the man who knew something about it. You kept it a secret?

A. That is all I know about it; just seeing the men pass there.

Q. Have you any reason on earth for your conduct? How long did Burt stay in that country after that?

A. I don't know anything about it; I left when I told you—Thursday after Christmas.

Q. Why did you not have Burt arrested?

A. Two men on the same case? I never heard of two men being arrested on the same thing.

Q. You didn't? Don't you know the officers of the law only want to get the right man? They are on the side of the murdered man always, and against the murderer, whoever he may be.

A. Of course, I know it.

Q. Any officers in that country?

A. I am not acquainted with very many of them; I know John West.

Q. Are there any officers in that country?

A. Yes, sir.

Q. How many?

A. I suppose a good many around Muscogee.

Q. Are you a white man or an Indian?

A. Part Indian.

Q. What kind of an Indian?

A. Cherokee.

Q. Where were you born?

A. In Sequoyah district, Cherokee Nation.

Q. Have you been here before?

A. Yes, sir; in town. I have never been here as a witness before.

Q. Nor charged with an offense?

A. No, sir.

284 Q. Raised where?

A. Yes, sir, raised well.

Q. Where?

A. Sequoyah district.

Q. Where did you go after Christmas?

A. To the Coo-wee-scoo-wee district.

Q. How far from this place?

A. Something near 135 miles.

Q. Who was with you?

A. Ed Williams and Kit Harris.

Q. How long were you gone?

A. I have not been back there; I have been away from there since I went off.

Q. You live 130 miles from where this thing occurred?

A. No, sir.

Q. Who is here saw you?

A. Mrs. Nicholson and Mr. Morgan saw me pass there.

Q. You knew Sam Morgan was missing?

A. I heard he went off. Him and Mr. Crumpton had left the bottom and went off. Jim Watos'n was telling me they left there.

Q. Had Crumpton left.

A. I never saw Crumpton after that at all, or any more after he was telling me.

Q. That is the last time you saw Crumpton on the day you saw those men riding together?

A. Yes, sir.

Q. When was that?

A. On the 3rd of November.

Q. On Sunday?

A. Yes, sir.

Q. How did you know it was on the 3rd if yo' didn't pay any attention to that?

A. I aint paid no attention before.

Q. What day of the month is this?

A. The 29th, aint it?

Q. Of what?

A. May.

Q. What day of the month was last Sunday, a week ago? Well, let that go. How long after was it this man Watson told you Bood and Morgan had gone off and left the country?

A. It was Tuesday or Wednesday afterwards.

285 Q. After you saw them down there?

A. Yes, sir.

Q. You never saw either one of them afterwards?

A. No, sir.

Q. What did you mean by telling me awhile ago that upon the evening the body was found, on Sunday evening, you saw him, you saw Crumpton here the evening the body was found, when you were at Ed Williams' gate?

A. Did I say I saw Crumpton? I don't think I said it.

Q. Did you see him that day?

A. No, sir; I never.

Q. Did you see Kit Harris that day?

A. No, sir.

Q. What were you doing that day until late?

A. Yes; I saw Kit Harris late in the evening that day.

Q. Didn't you tell me while ago that he staid all night at Harris' that night, and that he got up next morning and went off somewhere?

A. I didn't tell you I saw him. I told you they said he staid all night at Mrs. Harris', and Kit said so.

Q. It is not true then Crumpton went off?

A. Crumpton went off, I suppose; I never saw anything of him next day.

Q. You supposed he went off with Morgan, didn't you?

A. That is what I supposed.

Q. You have always understood he did, have you not?

A. That was my understanding, they left the bottom together.

Q. The same time Morgan was missing?
A. Yes, sir.
Q. When did you understand that Crumpton came back?
A. It was the first time I heard he was back in the bottom, was when I met Morgan there and Colquitt.
Q. When was that?
A. Along in D'cember.
Q. You had not seen Bood since then?
A. No, sir.
Q. You had not heard of his being there?
A. Not that I recollect of.
286 Q. And you still live at Watson's?
A. Yes, sir.
Q. When you lived at Watson's place in December, where did you claim to meet Bob Morgan here?
A. Between down there and Watson's place, or the Vann place.
Q. Do you know Colquitt?
A. Yes, sir.
Q. Did you ever see him before you came here?
A. Yes, sir.
Q. Where does he live?
A. He was living up there in the bottom above Morgan, I suppose on the Harnage place.
Q. What direction from Harnage's?
A. I never was at Colquitt's house.
Q. How long have you been here?
A. I came here Tuesday morning last.
Q. Where were you subpœnaed and when?
A. On the 26th of May and I got here on the 27th; I was subpœnaed at Ed Williams'.
Q. You were subpœnaed the day before we went into the trial of this cause?
A. Yes, sir.
Q. And you came here the next day and found the case progressing?
A. The case was called the same day I got here.
Q. You had told Ed Williams and Kit Harris, and they are both related to the defendant, this story you now tell, as early as January and April *m*, and yet——
Col. CRAVENS. We have sent three times for this witness. (Reading subpœna.) This was allowed on the 24th of April.
Col. CLAYTON. When were you subpœnaed?
A. On the 26th of May.
Q. About a month ago you were heard of?
A. Yes, sir.
Q. And in January you had told this thing to Ed Williams?
A. Yes, sir.
Q. How far is this house of Watson's from the road?
287 A. Between 300 and 400 yards.
Q. You were at the house when you saw these parties pass you have named?
A. Call the names.

Q. Call them yourself; you said there was some of those parties on the porch.

A. I was only 200 yards from them; they rode right up to Watson's gate.

Q. What were they doing out of the road?

A. There was a road runs right up to the gate.

Q. That road was 200 yards, then, from the porch. Any trees or bushes between the house and the road?

A. There is a brush right there at the gate; right there close to the gate.

Q. Any trees there?

A. Some trees there.

Q. Ain't there a good many?

A. There is a good many close to the gate; it has been trimmed out for wood.

Q. Who did you say you saw?

A. I supposed it to be Charley Glass and Bood Crumpton and Sam Morgan and a fellow by the name of Brown.

Q. Where is Brown?

A. He is up there in the bend, I suppose.

Q. What is his given name?

A. Jim.

Q. You tell me where he is and I will send and get him.

A. Up there somewhere in the bend; he is just working around.

Q. Where was he staying at that time?

A. I don't know.

Q. You can not tell where he lives?

A. He was staying somewhere right around in the settlement; partly with Jim Lowry and partly with George Williams, and part of the time at different places.

Q. Which one of the Lowrys?

A. Jim Lowry.

Q. That is the one is here?

A. Yes, sir; I think he is here.

Q. What kind of a looking man was Brown?

288 A. Tolerable tall, dark man.

Q. What kind of a horse was he riding?

A. Well, the one I taken to be him was riding a bay horse; I can not say positively it was him.

Q. When you spoke to Williams about it, did you tell him Brown was along?

A. I told him I taken it to be Jim Brown.

Q. Do you know man by the name of Bill Keyes?

A. Yes, sir.

Q. Was he along?

A. I don't think he was in the crowd.

Q. But Jim Brown was?

A. I don't know; I just taken it to be him.

Q. If I sent and got him you would say you never said it was him. Give me some idea where the man lives and I will send for him and get him.

A. I don't know exactly; he lives in the settlement.

Q. Do you mean to say he lives in that settlement where this thing occurred?

A. Yes, sir.

Q. How do you know?

A. I saw him there several times.

Q. Have you seen him there since this body was taken up?

A. No, sir.

Q. Are you living with Williams now?

A. Yes, sir.

Q. When did you come back from the Coo-wee-scoo-wee district to live with Williams?

A. He is living up there now.

Q. Then you have not been down in this settlement since you left it?

A. No, sir.

Q. Then you don't know whether he is living there now or not?

A. No, sir; but a few days before that time he was in the settlement.

Q. Before what time?

A. Before I saw Burris and Mr. Morgan and Mr. Glass, that I taken it to be, and Mr. Brown.

Q. Do you call this Man Burris?

289 A. Yes, sir; he is known up there as Bood Burris.

Q. You say it was Bood Burris here?

A. Yes, sir; I taken it to be him.

Q. There was four men in the crowd. Are you certain that Glass was one of them?

A. I can't be certain; I tak'ne it to be him. I 'aken it to be the man riding the horse.

Q. Which way were they going?

A. Up towards Abe Davis', alongside the fence.

Q. Toward Muscogee?

A. No; on the road going to Davis', right up toward Frozen Rock.

Q. Do you know where the white church is?

A. Yes, sir.

Q. Going in an opposite direction from that?

A. Yes, sir.

Q. Away out toward the river?

A. Yes, sir.

Q. How many miles were they from that when you saw them?

A. I believe they call it something near 4 miles, between th'ee and four.

Q. And between 12 and 1 o'clock and all four on horseback?

A. Yes, sir.

Q. The next thing you saw was the buggy coming down the road?

A. Yes, sir; to notice them.

Q. Keep your hand down; don't be so fi'gety.

A. Well, I am trying to explain to you as good as I can. I think I have answered the question 7 or 8 times now.

Q. It don't make any difference if it was 15 times. I have not asked you before about this at all. What kind of a buggy or carriage was it?

A. A buggy with a top on ot.

Q. Was the top up or down?

A. Down.
Q. What sort of a horse?
A. A brown horse, and a black horse, and a blaze face, bald face.
290 Q. Both of them?
A. No, sir.
Q. Which side was the black horse on?
A. On the lead side, that is, the left side.
Q. The black on the left, next to you?
A. Yes, sir; he was.
Q. Any women in it?
A. No, sir.
Q. How many seats did the buggy have?
A. I never noticed noticed how many.
Q. Well, you s'w it twice, you kn'w?
A. I don't know how many; I never noticed particular.
Q. You stood there right alongside of the buggy and talked to these men. Now, tell me.
A. I never noticed but one seat in the buggy.
Q. Which side was Morgan sitting on?
A. Setting on the left-hand side.
Q. The side next to you?
A. Yes, sir.
Q. Who was driving?
A. The man he introduced to me as Mr. Burt.
Q. Had yo' ever seen Mr. Burt before?
A. I saw him once pass down the bottom about 2 weeks before that.
Q. With whiskers on?
A. Yes, sir.
A. Long black whiskers?
A. Yes, sir.
Q. When you saw these men they were riding up towards that field, were they?
A. Which ones?
Q. Why, the ones I am talking about; those two in the buggy?
A. Going right along-side of Sykes' prairie field, right down the road.
Q. What were you doing there?
A. I just got tired around the house.
Q. What did you go down to Sykes' field for?
A. Just walking around.
Q. What for?
A. Just to be doing it; to pass away the time.
291 Q. What time of day was that?
A. In the evening, about 2 hours by sun.
Q. How far was it from Watson's house to Sykes' field?
A. Between 300 and 400 yards.
Q. Is Watson's house in his field?
A. Yes, sir.
Q. You lived the'e, did you?
A. Yes, si'; I was living there at that time.
Q. You went down to Syke's field and it was the'e you saw these men?

A. Yes, sir.
Q. And the buggy was going along with them in it?
A. Yes, sir.
Q. They were all riding along down the big road right toward that field where the body was afterwards found?
A. No, sir.
Q. What direction were they going?
A. Right down the Muscogee road towards Gooseneck Bend.
Q. Which side of the creek were they on?
A. The west side of the creek.
Q. On the same side Muscogee is on?
A. Yes, sir.
Q. Then they were going towards this field?
A. No, sir.
Q. They had not gotten to the ford yet?
A. No, sir.
Q. Don't you know the Sykes field?
A. Yes, sir.
Q. Well, the'e is no road around the Sykes field on that side of the ferry.
A. No road around the Sykes field?
Q. No; there is not.
A. There is two Sykes fields.
Q. Is there?
A. Yes, sir; the Watson field lays between the two fields; not all of it does not.
Q. The Sykes field lays on the other side of the road from you?
A. Yes, sir.
Q. On the main road?
A. Yes, sir; they were on the main Muscogee road going toward
292 Jim Lowry's, going right down toward Rock Ford. That road goes on up to Mrs. Nicholson's; they could cross the creek and go up by Bill Rider's.
Q. How far from the creek?
A. Half a mile west of the ford.
Q. They had to go half a mile before they got to the ford; then to the place of the killing, how far?
A. I don't know.
Q. You have lived there?
A. I know I have, but I never stepped the distance.
Q. Did you ever step any of the other distances you speak of?
A. I walked over them.
Q. Did you ever step them?
A. No, sir; I suppose it to be around the road about 2 miles from where I saw these men, or may be 2 and a half.
Q. Where did you say you traced the buggy tracks to?
A. Down there at the bars.
Q. Clear up to the bars?
A. Yes, sir.
Q. Is there any other living man that saw that?
A. I don't know there is, not without it was Mr. Lawson's folks.

Q. Any other man saw these men in the buggy?
A. I was by myself when I saw them.
Q. Is that country thickley settled?
A. Tolerably.
Q. You are the only man that was moving around on that day, I reckon?
A. I was there at Watson's house in the evening.
Q. Where was Watson's people?
A. Down in the bottom at Mrs. Nicholson's; that is, his wife.
Q. Did you see anybody else except those people that day on that road?
A. I saw Mr. Robinson; John Robinson passed down in the morning.
Q. During the time you saw those people did you see anybody else?
A. No, sir.
293 Q. Did you hear any guns fire?
A. Yes, sir; all through the day.
Q. Where?
A. In the Lowry field.
Q. How many did you hear fire there?
A. A good many; I never took any pains to count them.
Q. A great many fired up there in the Lowry field?
A. Yes, sir.
Q. What were they shooting?
A. I suppose they were shooting squirrels.
Q. In the Lowry field; how many shots did you hear down in that direction?
A. I don't know how many.
Q. How do you know it was in the Lowry field?
A. It was down in that direction.
Q. You heard a good many shots down there?
A. Yes, sir.
Q. Then there was a good many people moving around?
A. Well, I don't know how many there was down there.
Q. Did you see any of those people shooting?
A. No, sir.
Q. They would have to pass up and down those roads?
A. No, they wouldn't; they could go in another direction.
Q. Were you on the main Muscogee road when you saw these people, these two people in the buggy?
A. Yes, sir; then I was.
Q. How large a man was Sam Morgan?
A. He wasn't a very large man, tolerably tall.
Q. What kind of hair did he have?
A. His hair was a little lighter than his brother's there.
Q. Did he have a mustache?
A. Yes, sir.
Q. What color was it?
A. Light; on the light order.
Q. Heavy?
A. Heavy, long mustache.
Q. What did he weigh?

A. About 120 or 130 pounds.

Q. You say you met nobody there except those people you
294 mention?

A. No, sir.

Q. Did you ever speak to his brother about seeing him there?

A. No, sir; I never spoke to him for a right smart time before that.

Q. Did you ever speak to Glass about it?

A. No, sir; I didn't.

Q. Did you speak to Burt about it?

A. No, sir.

Q. You did not speak to him, because you thought he was the man. You did not think Glass and Brown had anything to do with the killing?

A. No, sir; I didn't.

Q. You don't know who done the killing. There is no reason why you should not speak to them about it, and ascertain what they knew?

A. I never saw Brown since the killing.

Q. Do you know whether there was any effort made to get Glass here, except the effort I made yesterday to get him down?

A. I don't know.

Q. When you told about it, you told that Glass was along?

A. I taken it to be Glass on the horse.

Q. You told about Brown being along too?

A. I told about a man I taken to be Brown; I wouldn't say it was Brown; I wouldn't say yet it was, and don't expect to.

Q. Do you know whether or not Brown has ever been seen about the matter?

A. No, sir.

Q. Were you and Sam pretty well acquainted?

A. Tolerable well.

Q. How long had you known him?

A. Near 3 or 4 years.

Q. Did you know the defendant was in jail flown here charged with this murder?

A. Not until the 20th of January.

Q. How did you come to learn it on the 20th of January?

A. Ed Williams, when he moved up, told me they had captured him.

Q. And charged him with this crime?

A. Yes, sir.

295 Q. Ever since the 20th of January you have known it. Is there anybody here saw you on that day, or you saw?

A. I don't know that there is, only Mr. Burt.

Q. And anybody saw those men and you together?

A. Nobody that was with me at that time. I can't say who saw them after they passed.

Q. What was the next house below where you saw those men at Sykes' upper field?

A. There is no house between there and the creek.

Q. Did they not pass any house in going where you tracked that buggy?

A. No, sir.

Q. Do you know where a man by the name of Tucker lived?

A. He lives in Sykes' field; the other field, though.

Q. The road runs right by there, don't it?

A. Where I saw the buggy tracks there is no house between where I saw the men, near Watson's house, and where the buggy tracks were.

Q. Isn't Tusker's house between?

A. No, sir.

Q. How far is Tusker's house from the road?

A. I never was right at the house; I have been at the upper part of the field.

Q. Did you not follow the tracks to the Lowry field?

A. No, sir.

Q. What were you talking about going up to the bars?

A. The bars was at Watson's field.

Q. You never tracked them further than that?

A. No, sir.

Q. Did you ever track them across the ford?

A. No, sir; there was no ford there where the buggy tracks stopped.

Q. Then you never got the buggy tracks nearer than 2 miles from the place of the killing.

A. I never saw the men any nearer than that.

296 Q. How far did you follow the buggy tracks?

A. I followed them something near 60 steps, I reckon, out to the creek, where they turned out of the road.

Q. Then you never followed them across the road?

A. No, sir.

Q. Then you did not get the buggy tracks nearer than 2 miles from where the body was found?

A. Yes, sir; they were nearer than that.

Q. How much nearer?

Q. Whereabouts on the creek did you follow the buggy tracks?

A. At the end of Watson's field.

Q. On which side of the Muscogee road?

A. The left-hand side going down toward the bend, going down in the bottom.

Q. How far from the Muscogee road was the buggy tracks?

A. I don't know exactly.

Q. Did you go across the creek?

A. No, sir.

Q. How far from where you saw these men was it that you tracked that buggy?

A. I don't know exactly how far down the road, but straight through it wouldn't be over half a mile.

Q. Did it go through the woods?

A. It turned out and left the road about 20 steps below the bars and went to the bank of the creek.

Q. It then left the road to the left?

A. Yes, sir.

Q. And went to the right?

A. Yes, sir; to the creek.

Q. The buggy left the road at the corner of Watson's field?

A. Not the corner of the field; at the bars; it is the end of the field.

Q. How close to Tucker's house was it you followed them?

A. It couldn't have been a great ways.
Q. How far?
A. Maybe a quarter.
297 Q. Do you know where Bartlett lives?
A. No, sir.
Q. About how far from the killing was it you found that place?
A. I don't know; I never have travelled over that road.
Q. What is your best judgment?
A. About three-quarters of a mile.
Q. Was it going in the direction of that field when you saw those tracks last?
A. It stopped right at the creek.
Q. Were they going in the direction of the field when you saw the tracks last?
A. No, sir.
Q. What was it Sam Morgan said to you?
A. He introduced me to his cousin, Mr. Burt, and said they had been out to the other side of Muscogee to take some girls home.
Q. Did they say what girls?
A. No, sir.
Q. Did he offer you some whiskey?
A. No, sir.
Q. What made you think they had whiskey?
A. I thought maybe they had whiskey by finding buggy tracks down there on Monday morning and leaving the road; that they had went out there to hide it.
Q. What kind of clothes did Burt have on?
A. Dark-looking clothes.
Q. What kind did Sam Morgan have?
A. On the light order.
Q. What kind?
A. Light suit.
Q. Striped or what?
A. I think they were little checks across.
Q. What kind of boots did he have on?
A. I think shoes.
Q. Do you know whether they were buckled or laces?
A. I never noticed.
Q. What kind of a necktie?
A. I never noticed his necktie particular.
298 Q. What kind of a hat?
A. A black hat.
Q. Small checks or large checks.
A. Small checks.
Q. And shoes, you say?
A. I never noticed whether they were shoes or boots; I think shoes.
Q. What did you tell me they were shoes for if you didn't notice them? You told me you didn't know whether they were buckled or not, but they were shoes he had on. I suppose you noticed them or you wouldn't have mentioned it?
A. I never noticed particular.

Q. You noticed well enough to swear to it a few moments ago.

A. I never noticed whether they were shoes or not.

Q. Then why did you swear they were shoes. You certainly did notice it or you would not have sworn it.

A. I said I never noticed particularly.

Q. He did have shoes on. I am not trying to catch you on that. You have sworn to it. Of course, you noticed it.

A. I know he generally wore shoes.

Q. What did the other man have on, shoes or boots?

A. I never noticed what the other man had on.

Q. What sort of a suit did he have on?

A. A dark-looking suit.

Q. Stripes?

A. Sorter fine spots over them.

Q. Just turn your head around the other way. What kind of a suit have I got on?

A. You got on a dark suit.

Q. Don't turn around. Any stripes in it?

A. No stripes in it.

Q. What sort of pants have I got on?

A. Dark; black.

Q. They are gray?

A. They are dark.

Q. What sort of necktie have I got?

A. I have not noticed.

299 Q. Have I got boots or shoes on? Oh, you are looking. You know just how these men were dressed, of course. You know that man had on a dark coat with kind of spots in it; how came you to notice that?

A. I just happened to notice the coat.

Q. How come you to notice the suit he had on?

A. Why, you can see that man standing there, can't you——

Q. If my attention was called to his clothing——

A. Well, you could tell to the best of your knowledge.

Q. What sort of a spotted horse was that Morgan had?

A. White and red spotted.

Q. Is that the nearest you can come to it?

A. Well, you might call it a light bay.

Q. Big spots or little spots?

A. Tolerable large spots; what I call a paint horse.

Q. Big white spots and white face and nose?

A. I think he has got a white face.

Q. One of these white-eyed horses?

A. I never have been right at the horse to notice whether he is white-eyed or not.

Q. Horse or mare?

A. Horse.

Q. You noticed that?

A. I noticed Sam riding him before that.

Q. Well, you knew before what kind of a horse it was; what kind of a mane and tail did that horse have?

A. The main and tail were dark.

Q. Good heavy main and tail, or light?
A. Not a very thick; the tail wasn't very heavy.
Q. Short or long?
A. Tolerable short.
Q. Cut off?
A. I don't think it was cut off.
Q. And it was dark red or black?
A. What might be called black.
300 Q. If his mane and tail were white it ain't the same horse?
A. No, sir.
Q. If his tail was bobbed off it couldn't be it?
A. Of course, if they were cut off, and it didn't have a mane and tail, there couldn't be a mane and tail there to make anything out of.
Q. Are you sure you saw that horse?
A. I saw him pass there that day.
Q. Are you sure you have given the proper description of him?
A. I am giving the description of him the best I know.
Q. I expect you are mistaken. You learned it was sometime about the 23rd of January that the defendant was put in jail; the 20th of January Williams told you so?
A. Yes, sir.
Q. And Jim Burris; did they go up there at that time?
A. Yes, sir.
Q. You moved up there before?
A. I went on Thursday after Mr. Morgan was taken up; yes sir.
Q. When they came and told you he was in jail, then it was that you told them about this thing?
A. I told him.
Q. Is that the time you first told him?
A. It was a day or two after he got there; yes, sir.
Q. Then it was along about the 22nd or 23rd you first told Williams?
A. I don't recollect what day of the month it was exactly.
Q. You remember it was the 20th he came there and told you. Defendant was arrested, and it was a day or two after that you told him. That was the first you told him?
A. Yes, sir; that is the first time I told him about seeing Sam and the man in the buggy.
Q. Was Jim Burris there?
A. Yes, sir.
Q. Tell him about it, too?
301 A. No; I never said nothing to Jim Burris about it that day?
Q. Tell me why it is you didn't tell this thing before the 20th of January, and then only to Mr. Williams. I will give you another chance to give a satisfactory account of that thing.
A. I didn't care much about coming down as a witness.
Q. You would rather an innocent man would hang than come down here as a witness?
A. I didn't think they would hardly hang the man on circumstantial evidence.
Q. You thought he would be saved anyhow?
A. I thought maybe he would come out.

Q. That is all the reason you can give?

A. Yes; that is, I never——

Q. Are you telling the truth about this thing?

A. Yes, sir.

Q. You are certain of that?

A. Pretty certain of it.

Q. Why did you not tell the truth about it before*m* then?

A. I have been telling the truth about it all the time.

Q. If you are telling the truth now, why did you keep it to yourself? Can you give a reasonable account for the fact that nobody saw these men but you?

A. I don't know who saw the men. There was no one with me at the time I saw them.

Q. Can you give no better account why you locked it up in your breast so long, only that you thought they wouldn't hang a man on circumstantial evidence, and you did not want to come down here as a witness? How much are you getting?

A. I don't know that I am getting anything.

Q. Where you are at work. Have you been working by the day for Mr. Williams?

A. He agreed to give me 75 cents a 100. I have been splitting some rails for him.

Q. And you didn't want to come down here as a witness?

302 A. I knew what little I knew wouldn't do much.

Q. You know you told Williams they would have you as a witness, and you said while ago you supposed they would hunt you up, and complained that Bob Morgan did not hunt you up?

A. I don't know I complained.

Q. You said that he ought to have done it?

A. I said it was his place if he wanted to see me. He was around hunting other people up?

Q. He didn't know you knew anything about it. So you can't give any other reason? I want to give you another opportunity to explain that thing, if you can.

A. Well, I have explained it as near as I can.

Col. XRAVENS. When you saw those 4 men you were not near enough to recognize the 4 men and see who they were, but you knew 2 of Morgan's horses, and from that you inferred that was Bood Crumpton and Sam Morga*b* riding two of Morgan's horses, and you knew Glass' pony, and you supposed it was Glass on that?

A. Yes, sir; I just undertoo*d* to state that I taken it to be Charley Glass and Bood Burris and Sam Morgan, and the other one I could n8t say for certain who it was, but I taken him to be Jim Brown.

Q. Why did you say it was Bood Burris and Sam Morgan? Did you recognize them?

A. I recognized them more by the horses.

Q. You knew the horses?

A. I think I knew the horses.

Q. Why did you think.

A. There was no other horses in the bend of that description.

Q. Looked like them?

A. No, sir.

Q. Why did you say it looked like Charley Glass? By his pony?
A. Yes, sir; by his pony.
Col. CLAYTON. Charley is an Indian?
A. Yes, sir.
303 Q. Was it an Indian you saw on it?
A. I guess it was; if it was Charley it was an Indian.
Q. You saw him and you picked him out here. Was he an Indian?
A. Yes, sir.
Q. Any other gray horse in the bend except the one Morgan was riding?
A. Yes, sir; several.
Q. You were near enough to see it was a particular gray horse?
A. I was near enough to see it was Morgan's horses, of course.
Q. Were you close enough to recognize this man (the defendant)?
A. I couldn't say for certain it was him.
Q. But you recognized him by his clothes and by his coat. He did not own the horse. How did you know that was the man?
A. I supposed it was.
Q. Why did you suppose it?
A. By him being with Sam and them being together.
Q. Did you recognize him or only his horse?
A. His horse.
Q. Why not Sam on the gray horse and Bood on the other horse?
A. The man had on a white hat.
Q. How long had Sam owned the spotted horse?
A. I don't know; only a short time.
Q. Don't you know he only owned him for 3 weeks?
A. No, sir; I don't know.
Q. If he had only owned him for three weeks, it is not true that this man and he had been riding them over there much?
A. The first time I saw Sam riding the spotted horse was at Watson's at a dance?
Q. When was that?
A. In October last.
Q. Before or after the fair?
304 A. After the fair—no—yes; the dance was after the fair.
Q. Then it was after the 25th of October. The first time you ever saw him——
A. Not the first time I ever saw the horse.
Q. But the first time you ever saw Sam with the horse?
A. The first time I ever saw Sam riding the horse.
Q. And that was after the 25th day of October, and he was killed on the third of November, and you say they were riding every Sunday on these horses?
A. Did I say every Sunday?
Q. Yes, sir. You had only seen him a week before?
A. I saw Mr. Crumpton at the dance, riding Mr. Morgan's gray horse, and I have saw him down there in the bottom.
The COURT. The court will not be in session to-morrow, as it is a National Decoration day. There will be no impropriety in going to the decoration services, unless the gentlemen object to it.
Col. CRAVENS. We don't object to it.

305 SATURDAY A. M., *May 31st*, 1890—8.45 o'clock.

Mr. WOLFENBERGER. I desire to file application for three witnesses in this case.

The COURT. At this time of the trial it is too late to file applications for witnesses; you may file it, though. (To the clerk.) Let the application be filed and overruled.

BOOD CRUMPTON.—Sworn in his own behalf.

Mr. WOLFENBERGER. Where do you live?

A. When I was at home I lived in the Cherokee Nation, 8 or 9 miles east of Muscogee.

Q. Where were you on November 3rd; do you remember?

A. Yes, sir.

Q. 1889?

A. Yes, sir.

Q. Where were you?

A. I was at Mrs. Harris' Sunday morning.

Q. Who did you leave there on Sunday morning with?

A. With Mr. Morgan.

Q. Which Mr. Morgan?

A. Sam Morgan.

Q. Who was with you, if anybody, when you left there?

A. We was by ourselves.

Q. What time did you leave there?

A. We left there pretty early in the morning; I suppose it was between 7 and 8 o'clock; just after sunup.

Q. Just go on and tell us what you did that morning, where
306 you went and when you came back, and all about it, just in your own way and talk; tell the jury all about it.

A. The morning of the third day of November, just before breakfast there, Sam says to me, he says: "Let's go up to Davis' to-day and see the girls." I said, "All right." After breakfast we went out in the lot and got our horses and saddled them up and brought them to the gate and went in the house and dressed and started right on up the road towards Mr. Hoyt's, went on up to Mr. Hoyt's, just before we get to the house the roads fork in about 100 yards of the house, and we went on up to the house, and we went on three or four hundred yards to Mrs. Vann's; I went to Mr. Hoyt's and helped him feed and water his hogs, and me and him went over to Mrs. Vann's; when we got there there was several parties engaged in a game of cards, and me and Black Hoyt played two games with them; after we played the games Sam got on his horse and loped up the road between 100 and 150 yards and called to me to come on, and I was standing there talking to a man named Ramsey about running a pony race, and he called to me three or four times, I don't remember which, to come on if I was going with him, and finally I got on my horse and rode on up there and we went on then until—we went on by Colquitt's, and there the roads forked again; one road went to Muscogee, the main road, and the other went up this way, and we went on the Muscogee road, this road close to the edge of the prairie, and it forked again; one went out towards the white church to another Muscogee road. Just at the edge of

the prairie, after we turned the last forks of the road, we met Mr. Keyes there and he asked Sam where he was going; he said he was riding around;
he says, "How would you like to have something to drink?" And
307 Sam said "I wouldn't care, to have something to drink." He says,
"well, let's go and get some," Sam said "where will we go to get it," He says "just come and go with me, I will show you where to get it." He got up behind him then, and we rode on. Just before we got to the cross roads again, the one coming from Brushy Mountain into the road we was in, crossing that, just before we got to the cross roads, there was a carriage come down the same road that met us right at the forks of the road, and was standing there talking, and when this carriage drove up Sam said "good morning to him, and asked him where he was going, and I don't remember whether he told him where he was going or not, and the talk commenced with him, and he introduced him to me and Keyes as Landrum, and then they stood there and talked a little while on one side of the buggy, and me and Keyes was setting out on the other side on our horses; we didn't get off of our horses at all, and they was talking there, I couldn't understand what they was saying, and I heard Sam ask him if he wouldn't like to have something to drink, and he said he wouldn't care to have something to drink along the road, it wouldn't hurt him, and he turned to Keyes, and said which way would they go to get it, and he says, "we will go on the creek down up towards Muscogee" and then Sam says "let one of the boys stay here, we will go and get it; we don't want to ride our horses so far and back double." Sam says to me "you stay here until we get back." I said "I will stay if you will agree not to be gone long, and not drink any until you get back." Then he said he wouldn't, and I agreed to stay, and Sam got on
his horse, and Keyes staid on the horse I was on, and
308 went right straight off towards Joe Harris', and went by Joe Harris', going down to Pete Maclemee's, right on the same road that runs that way, and they went out of sight that way, and that was the last I seen of them until, I reckon, about 2 hours, maybe two hours and a half, when Keyes came back with the horses and told me when he rode up to me, I says, "Where is Sam and the other fellow?" and he said that Sam went on out west with this man to herd some ponies for him, and this man was talking of herding some before he left there, asked Sam if he would go with him, and Sam told him he hadn't made up his mind whether he would go or not. He told me that Sam said to leave this spotted horse at Burris, and tell him he would pay him for feeding him, and take the gray horse to Black Hoyt's, and leave that there, and if he wasn't back by the first of December to turn that horse over to his brother Bob, and take Ramsay's name off the note he was standing good for. If he wasn't back by Christmas that the spotted horse was to be turn'd over to his cousin, and he told me about the cotton. He says to pick out the cotton, and to pay Kit Harris twenty dollars, and Grider five dollars, and Black Hoyt two dollars, and to pay hands for picking it, and pay myself for the trouble, and if there was any money left to turn that over to Bob Morgan; that is about all that was said while we was standing there, and he went right back towards Joe Harris', right on straight that way, and I went on down the main public road to Burris' and left the spotted horse there, and rode on up to Grider's, Kit Harris's place. Just before I got

there I overtaken Mrs. Harris and her daughter, Ed Williams' wife, I passed them and went on to Grider's, and stopped there.

309 Q. What time did you get back in the evening with the horses?

A. I got back there between 3 and 4 o'clock, I suppose.

Q. When you got to Grider's, who did you see?

A. When I got up there, there was a boy named John Wyatt, and Ed Williams, and Kit Harris was setting on the porch.

Q. Did Bob Morgan come there while you were there?

A. No, sir.

Q. Where did you go from there?

A. We staid there and talked I reckon about half an hour, and Black Hoyt come riding down there and stopped, and he asked me to go down to Smith's with him, and I got on the horse, and me and him rode down to Bill Burris' and Smith happened to be there, and we didn't go any further.

Q. What did you do with the horses when you got back with them?

A. We come back to Black's and I left the horse there——

Q. What did you do with the horse when you first brought it back?

A. I left the spotted horse at Mr. Burris'.

Q. You took the other horse and went on to this man Grider's?

A. Yes, sir.

Q. What did you do with the horse after that?

A. After that I left the gray horse at Black's, and told him what was to be done with it.

(Witness is here shown a map, and he locates on it the different places he went to, as spoken of by him in his testimony.)

A. While they were gone with the horses I moved back about 100 yards, and he come back with the horses and come there.

Q. Did you and Mr. Morgan have any difficulty in any way?

A. No, sir.

Q. How long did you know Mr. Morgan?

310 A. About 2 years; been living in the same settlement with him about 2 years.

Q. There has been something said here about a letter; I want to ask you something about that. Did you take a letter and show it to Mr. Morgan, purporting to be from Sam Morgan?

A. Yes, sir.

Q. Where did you get that letter?

A. Out of the post office at Muscogee.

Q. Did you take that letter and show it to Bob Morgan?

A. Yes, sir.

Q. Did he read it?

A. Yes, sir.

Q. What did he say about it?

A. He said that was Sam's handwriting.

Q. Did he hand it back to you?

A. He handed it back to me.

Q. Did you show that to anybody else?

A. I showed it to a man named Burt, in the cotton patch, and Colquit, he looked at it.

Q. What did he say about it?

A. He didn't say much of anything about the letter; he said he reckoned Sam would be back in a few days, from the way he wrote.

Q. Did Burt ever come to you any more in the field, and you see somethin' run in the bushes and you tell him to shoot it, there in the cotton patch?

A. No, sir; not that I remember of.

Q. When did you first see man Burt.

A. About a week, I reckon, after Sam's disappearance there; they was picking cotton there in the field.

Q. You know when he come there to that settlement, do you?

A. No, sir.

Q. When did you first hear Sam Morgan was missing?

A. I didn't hear it until I was arrested.

Q. You didn't know anything about it until you were arrested?

311 A. No, sir.

Q. What time did you leave to go where you were?

A. I went from there on Monday morning.

Q. How far from where Mrs. Harris lived to where you went to?

A. I suppose it was about 12 or 13 miles.

Q. How did you go?

A. I rode as far as Bragg's Station with my half brother; I staid there then all that day until after dark that night, and then me and another fellow walked from there to where they had a party.

Q. I believe you say that Mr. Keyes told you that you were to gather the cotton crop?

A. Yes, sir.

Q. Why didn't you gather that crop?

A. Well, sir, they run an attachment on the crop, and I didn't have any more to do with it.

Q. Who sued out the attachment; do you know?

A. Bob Morgan, I suppose.

Q. Who gathered the crop?

A. Bob Morgan had it gathered, and gathered it together.

Q. Do you know who he had hired to gather this cotton?

A. This man Burt was picking there a part of the time, and Colquitt, and there was several others that helped him.

Q. Did this man Morgan come to you and ask you about where his brother was before he sued out this attachment?

A. No, sir; I hadn't seen him.

Q. Didn't say anything to you about it?

A. No, sir.

Q. Do you know what time it was he taken the attachment out?

A. It was on the next Tuesday, I believe; Tuesday evening.

Q. On Tuesday evening they levied an attachment on the horses?

A. Yes, sir; they run an attachment on the horses and crop

312 next day.

Q. Did he ever come to see you about where his brother was?

A. No, sir; I never seen him until the next Tuesday I went down to his house.

Cross-examination:

Col. CLAYTON. I understand you to say that on the morning of the third day of November—that is the day that Sam Morgan was missing?

A. Yes, sir.

Q. That you left Mrs. Harris'?

A. Yes, sir.

Q. You staid there all night that night, did you not?

A. Yes, sir.

Q. How much money did Sam have?

A. I don't know that he had any at all; if he had I didn't see any.

Q. You staid all night at Mrs. Harris'?

A. Yes, sir.

Q. I asked you if Sam had any money?

A. If he did I didn't see it.

Q. Did you have any?

A. No, sir.

Q. How were you going to pay for the whiskey?

A. Keyes was to get the whiskey.

Q. The old "Injun"?

A. Yes, sir.

Q. Was he to pay for it?

A. I don't know as he was to pay for it; he was to get the whiskey; he told us he would get the whiskey.

Q. You was going to get the whiskey without paying for it?

A. I reckon they were; I didn't have any money.

Q. You left Mrs. Harris to go to Davis' to see the girls?

A. Yes, sir.

313 Q. Did you go to see the girls?

A. That was supposed to be what we went for.

Q. Did you go to see them?

A. No, sir.

Q. Why didn't you go to see them?

A. We met this man Keyes and started to go to get the whiskey.

Q. You started from Mrs. Harris'?

A. Yes, sir.

Q. White's church is how far from Mrs. Harris', when you go around this way [indicating]?

A. I suppose that would be about three miles.

Q. How far is it the other way?

A. I reckon it would be about three miles and a half or four miles the other way.

Q. There is more than that difference, now; there is a mile's difference, at least, isn't there?

A. I suppose there is; yes, sir.

Q. You then went on down that road after breakfast?

A. Yes, sir.

Q. You went in and dressed yourselves to go to see the girls?

Q. Yes, sir.

Q. Got on your best bib and tucker?

A. Yes, sir.

Q. Blacked your boots?

A. No, sir; I didn't; we didn't black our boots.

Q. Washed your faces and cleaned your teeth and started off; what horse was you riding?

A. A gray horse.

Q. Whose horse was that?

A. Sam Morgan's horse.

Q. What horse was Sam riding?

A. A spotted horse.

Q. Whose horse was that?

A. Sam's horse.

Q. The two horses you brought back after Sam was killed?

A. Yes, sir.

Q. Then you started down that road and went on by Grider's
314 and by Mrs. Nicholson's, and went on down to Hoyt's?

A. Yes, sir.

Q. From Hoyt's there is a road leading right straight down to the White Church, is n'tthere, right straight to where you were when you met this man in the buggy?

A. Yes, sir; it forks at the edge of the prairie.

Q. Then you didn't go down that road to go there, but you still went on; went on passed Harnage's, didn't you, and Colquit's?

A. Yes, sir.

Q. Then if you had been going to Davis' you would have gone right on up that Muscogee road, on up to the river, but you turned off on this other road and come almost in an opposite direction back again to get back on this Brushy Mountain road?

A. No, sir; the roads forked that way; [indicating]; they wan't angling.

Q. (Witness is shown a map.) Why didn't you go on from here to Davis' instead of going around this way?

A. When we got here we turned right up this road here.

Q. What for?

A. I don't know what we turned up there for; we just rode up that road.

Q. Then what did you do? You came down here?

A. Yes, sir.

Q. You staid here while they went up the main Muscogee road to get the whiskey?

A. No, sir; they didn't go that way; they went this way [indicating on map].

Q. In the buggy?

A. Yes, sir.

Q. Where did you stay.

A. I staid right there all the time; I staid there until about 20 minutes before this man Keyes came back, and he came right out here [indicating]

Q. Didn't you go down this road [indicating on map] with Morgan that day?

A. No, sir; I didn't.

315 Q. When these men went they went off in that buggy?

A. Yes, sir.

Q. It is not true that you and a man named Brown and Morgan and Glass rode down that road together; there is not a word of that true?

A. I was not along with them; no, sir.
Q. You didn't do that?
A. No, sir; I did not.
Q. Tell me why when you got here you didn't go on around here and see these girls; why did you go down that way [indicating on map]?
A. All the time going from Vann's here Sam was ahead of me about 30 steps, and when he got here he turned this way [indicating on map].
Q. Why go out of your way so much?
A. That was the way; it is very near as far from here to here, as to here [indicating on map].
Q. What was you going in an opposite direction from Davis' for; You were going to Davis'?
A. Yes, sir.
Q. You started in an opposite direction; what did you do that for? What did you get off of your horse for and set down there; why didn't you go on with them?
A. They insisted on me staying there; Sam didn't want us both to ride his horses so far.
Q. There was a buggy?
A. Yes, sir.
Q. One of you could have gotten in the buggy?
A. Could have done it.
Q. Why didn't you do that?
A. They insisted on me staying there.
Q. Why did you stay there? Did you hide in the corner of the fence?
A. No, sir.
Q. You got in the corner of the fence?
A. No, sir; there was no corner of the fence; it is a wire fence.
316 Q. Did you see anybody while you were there?
A. I saw Joe Harris go right along here.
Q. Did you speak to him?
A. Yes, sir.
Q. What did you say?
A. I said "Good morning."
Q. Joe Harris is here?
A. Yes, sir; when he rode up he asked me what I was doing, and I told him I was waiting for Sam and Keyes to come back.
Q. Joe Harris is some relation to you?
A. Yes, sir; I think he is.
Q. He is here, isn't he?
A. Yes, sir.
Q. Did you see anybody else from the time you passed Colquitt's until you went down here and back up to Burris'; did you see anybody else?
A. Not in speaking distance.
Q. Did you go by any houses?
A. We went up by this house [indicating on map].
Q. The carriage was coming up the Brushy Mountain road?
A. Yes, sir.
Q. How many people in it?
A. One.
Q. You rode right on down there and met it?

A. Yes, sir; Sam rode right down there; me and Keyes I reckon was about 30 steps behind.

Q. You went on down there?

A. Yes, sir.

Q. What did you go over here to this field—how far is that field from the road?

A. It is about 200 yards.

Q. You went over to this field and got in the corner of the fence?

A. I set right by a corner of the fence.

Q. What did you set there for?

A. I set there to wait for them to come back with the whiskey they said they was going after.

317 Q. How many of them were they?

A. There was three of them left there.

Q. They had two horses and one buggy?

A. Yes, sir.

Q. How many seats in that buggy?

A. One.

Q. Why couldn't one of you get in there? Didn't Morgan get in that buggy?

A. No, sir.

Q. Why?

A. I don't know.

Q. There was room there?

A. Yes, sir.

Q. Two horses?

A. Yes, sir.

Q. It wouldn't have been too hard for two horses for you to get in?

A. I reckon not.

Q. You don't like whiskey?

A. Yes, sir; I like it; they insisted on me staying.

Q. Why did they insist on you staying?

A. He said he didn't want us both to ride his horses there and back.

Q. There was an empty seat in the buggy?

A. Yes, sir.

Q. That is the last you saw of the buggy?

A. Yes, sir.

Q. When Bill Keyes came back with the horses, how long had you been there?

A. I reckon between two hours and two and a half.

Q. Did Bill bring the pistol back with him?

A. No, sir.

Q. Did you have your pistol?

A. No, sir; I did not.

Q. Where was your pistol?

A. At Black Hoyt's.

Q. You are certain of that?

A Yes, sir.

Q. At Black Hoyt's at that time?

A. Yes, sir.

Q. Have you brought Black Hoyt here to prove that thing, that your pistol was at Black Hoyt's at that time?

A. No, sir.

Q. What makes you know it was at Black Hoyts'?

A. I had left it there.

318 Q. You are certain of that?

A. Yes, sir.

Q. Is Charley Vann here?

A. Yes, sir.

Q. Didn't you leave it at Charley Vann's?

A. I left Charley Vann's pistol with Charley.

Q. Didn't you leave your pistol there?

A. No, sir.

Q. Harrison Dykes is here?

A. Yes, sir.

Q. Here is your statement: "By Charley Vann and Harrison Dykes he can prove that when deceased and defendant parted with them on Sunday morning of the disappearance this defendant left the pistol which he had carried away from Mrs. Harris' with said Charley Vann, and that he was unarmed." Which is the truth? What pistol did you carry away?

A. Charley Vann's pistol, and I left it there.

Q. Look at that pistol [handing witness a pistol]; is that the pistol?

A. The pistol that was there, this side of the cylinder was rusty.

Q. Is this the pistol?

A. It looks pretty much like the pistol. I could not swear to it.

Q. What is your best judgment?

A. I think that is the pistol; it has been rubbed up and fixed since I had it, and I couldn't swear to it.

Q. That pistol Black Hoyt had it, did he? How long had he had it?

A. I left it there during the week before.

Q. You are sure he had it; it was there with Black Hoyt?

A. I left it there in the bureau drawer.

Q. This is the pistol that Morgan used to own?

A. Yes, sir.

Q. If that is the pistol Morgan had, then who did you leave it

319 with.

A. I didn't leave it with anyone.

Q. The week before?

A. Yes, sir; the week before.

Q. Who did you leave it with?

A. I left it at Black Hoyt's, in the bureau drawer, where I had kept it all the time.

Q. You are sure you left it at Black Hoyt's?

A. Yes, sir.

Q. When did you get it?

A. I got it the next week sometime, I don't remember what day it was.

Q. What did you leave it at Black Hoyt's for?

A. I had borrowed Charley Vann's pistol while Sam was at the fair.

Q. What did you borrow his pistol for?

A. I borrowed that pistol on the day that Black Hoyt killed the hog.

Q. What did you borrow it for?

A. To kill the hog.

Q. Where was your own pistol?

A. Sam Morgan had it down here to the fair.

Q. Ft. Smith fair?

A. Yes, sir; it wasn't mine at that time; I didn't own any at that time.

Q. When did you get the pistol?

A. I got the pistol after Sam came back from the fair.

Q. How long before he was killed did you get it?

A. I got it the first of the week before he went off. Between the time he come from the fair and the time he was missing I bought the pistol from him.

Q. You got it the week before he went off?

A. I don't know, it was just a week before, but it was——

Q. Do you not know he had his pistol pawned at that time?

A. Yes, sir; he had the pistol pawned when he was at the Ft. Smith fair.

Q. When did he bring it back after it was pawned?

320 A. He brought the pistol back Saturday week before he was missing; I think that is the day he went after it.

Q. When did you buy it?

A. I bought it the next Monday or Tuesday, as well as I remember; I know he tried to trade it to Kit Harris on Sunday before I bought it.

Q. It was the next Monday you bought it, was it?

A. Monday or Tuesday, along there somewhere; I don't remember what day it was I bought it.

Q. It was Vann's pistol you took with you that morning?

A. Yes, sir.

Q. What did you take it with you for?

A. I took it home.

Q. Why didn't you take it home sometime before that?

A. I hadn't been passed there before that; that was the first time I had been up there.

Q. How far did you live from Black Hoyt's?

A. I was staying there at the time.

Q. How far did you live from Vann's?

A. About 300 yards, I reckon.

Q. That was the first opportunity you had to get it to him, although you had the pistol before Morgan came down here to Ft. Smith to the fair?

A. No, sir; not before the fair.

Q. When did you get the pistol from Vann?

A. After Sam went to the Fort Smith fair.

Q. You had a pistol of your own the Monday or Tuesday before the Sunday he went off; so you must have had Vann's pistol before that?

A. Yes, sir.

Q. And you lived 300 yards of him, but didn't take it home

321 to him until that morning?

A. I had the pistol before that; Charley's pistol before that.

Q. You went to Mrs. Harris' to stay all night; what did you take the pistol there with you for; what was it doing there?

A. I left it there; I was working there at the later part of the week.

Q. What did you leave it there for; you lived within three hundred yards of Vann; why didn't you take it home to him?

A. The first opportunity I had I took it home.

Q. You lived only 300 yards of him?

A. I wasn't there during that time; I was at work at Mrs. Harris' the latter part of the week.

Q. Mrs. Harris says you were not there.

A. I was there Friday and Saturday.

Q. I thought you said you come there Saturday evening and staid all night.

A. I did.

Q. Then you were not there then?

A. I was there Saturday morning until evening.

Q. What was you doing?

A. I was working in the garden at Mrs. Harris'.

Q. Where were you in the afternoon?

A. I was at Black Hoyt's.

Q. Why didn't you take the pistol with you?

A. I went through the field to Black Hoyt's.

Q. You see you had an opportunity to take the pistol there?

A. I didn't think about it.

Q. You said a moment ago you didn't have an opportunity.

A. I had an opportunity if I had went to the house, but I never thought of the pistol that evening.

Q. You started off and took Charley Vann's pistol?

322 A. Yes, sir.

Q. Did anybody see you give Charley Vann that pistol that morning?

A. I suppose they did.

Q. Who?

A. I didn't exactly hand it to him; I laid it down where they were playing cards, and told Charley there was his pistol.

Q. You left that pistol there?

A. Yes, sir.

Q. Where was your own pistol?

A. At Black Hoyt's.

Q. How far is Black Hoyt's from Vann's?

A. About 300 yards; somewhere about that.

Q. You carried Vann's pistol to Black Hoyt's where your pistol was?

A. Yes, sir.

Q. And then you went over to Vann's and gave Vann his pistol?

A. Yes, sir

Q. Black Hoyt, of course, knows your pistol was at his house?

A. I don't know whether he knows it or not.

Q. When did you get it from there?

A. The same week.

Q. Did Black Hoyt see you when you got it?

A. I don't know whether he seen me when I got it; he saw me with the pistol, I suppose.

Q. When was it you pawned this pistol?

A. I don't know exactly; it was two or three weeks, though.

Q. Two or three weeks afterwards?

A. Yes, sir.

Q. You pawned it for whiskey, did you not?

A. Yes, sir; I pawned it to Grider.

Q. Grider told the truth about that, that you pawned that pistol for whiskey?

A. Yes, sir.

323 Q. You got that pistol from Sam?

A. Yes, sir; it looks like the pistol.

Q. Grider spoke to you about it, and asked you if that was not Sam's pistol, and you deny it?

A. No, sir; I didn't.

Q. You tell him he never owned it?

A. No, sir.

Q. You pawned the pistol to Grider, did you?

A. Yes, sir.

Q. Grider didn't say anything about it being Morgan's pistol?

A. No, sir; if he did I didn't hear it.

Q. Was there any other property that Sam Morgan owned, any property on earth, that he owned that you didn't get possession of that day he went off, or afterwards wasn't in possession of? Did he have anything that you didn't get possession of? You got possession of his horses and his saddles and his bridles that were on these horses.

A. One of the saddles belonged to Black Hoyt's brother and the other belonged to Oscar Coulter.

Q. You got the two horses, you got the crop, and you got the pistol; was there anything else he owned you didn't get?

A. I don't know that he owned anything else.

Q. Then you got all the property he had; he turned over to you all his property through Bill Keyes and didn't even speak to you about what he was going to do; didn't tell you he was going off?

A. I don't remember of him saying anything; I don't believe he did; if he did I don't remember it.

Q. What was the first word that was said between Morgan and this man when they come together?

A. "Good morning."

Q. Go on and tell all that was said; all you know that was said.

324 A. All I know that was said they said good morning to one another and shook hands; I couldn't hear just what was said; Sam was off on the other side of the buggy.

Q. That is all you heard at that time?

A. Yes, sir; until Sam came back to my side of the buggy, and then Sam asked him if he wouldn't like to have some whiskey to drink along the road, and he said that he didn't care, it wouldn't hurt him, and he said, "We will go and get some if you will go with us," and he said "How far is it?" and Sam said he didn't know how far it was, and he turned to Keyes and asked him which way he would go, and he said, "Up the road towards Muscogee."

Q. Now, that is all that was said?

A. I don't know that was all that was said; and then they turned to me and he said, "You stay here until we get back; until we go and get the whiskey." I said, "Well, how long are you going to be gone?" He said, "Not but a little while; we will get back as soon as we can."

Q. Did Morgan say anything about leaving to you?

A. This man was talking to Sam about hiring him to go with him.

Q. It is very strange you didn't tell Mr. Wolfenberger that, and very strange you didn't tell me that when I asked you to tell all that was said?

A. I was trying to tell you.

Q. Now, commence again and tell all that was said.

A. When we met this man Sam walked up to him and shook hands with him and told him good morning, and walked around on the side of the buggy from where I was and they stood there and talked a few minutes, and Sam walked back on this side of the buggy and asked him if he wouldn't like to have something to drink, and he said he didn't care; it wouldn't hurt him to have something to drink, and this man asked
325 Sam if he had made up his mind to go with him yet.

Q. You see, you forgot that before, didn't you?

A. I don't know as I did.

Q. You forgot to state it before to Mr. Wolfenberger when he asked you for all the conversation; I had to draw it from you myself; you forgot to state it. Why is it you forgot that, the most important thing for you to tell, and the one you would tell first if it was said?

A. I don't know it was the most imp'rtant thing.

Q. Now go ahead and state what he said about that.

A. He asked Sam if he had made up his mind to go with him yet, and Sam said he hadn't, and he said he would give him three and a half dollars if he would go with him; Sam said he didn't know whether he could go or not.

Q. Did you tell that before when you were talking to Mr. Wolfenberger, when he asked you to state all he said?

A. I don't know whether I did or not; if I didn't I aimed to tell it.

Q. I don't doubt that you aimed to tell it.

A. I aimed to tell just what was said there as near as I could.

Q. Now go ahead; was there anything else said there? Do not forget to tell it all this time; what was said after that about giving him three dollars and a half?

A. After he told him he would give him three dollars and a half to go with him, and Sam said he hadn't made up his mind and didn't know whether he would go or not, and then they looked around at Keyes and asked him which way would they go to get the whiskey, and he pointed toward the Muscogee road, toward Muscogee, and said "up on the creek there," and Sam asked me if I would stay until they got back; I asked him how long he would be gone; he said not long, would go as
326 quick as he could, and I finally agreed to stay there, and I walked from where we was over to the corner of the field and staid there a good long while, and I concluded I would go on back towards Burris', and I went back about 100 yards and stopped on a knoll, and then I staid there until Keyes come.

Q. When you were giving the conversation to Mr. Wolfenberger you said Sam asked Keyes where they would go, and he said "up the Muscogee road," and they then left.

A. I don't remember saying "up the Muscogee road."

Q. That is what you said, "they left me and went up that road toward Peeter Maclemee's."

A. That is the way they went; they went off in that direction.

Q. When Sam and he had this talk they rode up the Muscogee road, didn't they?

A. No, sir; they didn't.

Q. Didn't they ride up the Muscogee road to go after the whiskey?

A. No, sir.

Q. That is what you certainly said.

A. I don't remember saying that.

Q. What road does Peter Maclemee live on; on the Muscogee road?

A. You can go to Muscogee that way.

Q. Did they not ride up towards Peter Maclemee's when they all three rode off together?

A. They did.

Q. They went on the Muscogee road, did they not?

A. You can call it the Muscogee road; it wasn't a public road.

Q. How long had they been gone before Keyes came back?

A. I suppose about two hours and a half; between two and two
327 and a half; it seemed a long time to me; I had about given them up and had concluded——

Q. What time in the day did you meet them?

A. I suppose about 11 o'clock.

Q. What time did they leave, going up toward Peter Maclemee's?

A. In about half an hour after we met them.

Q. Left about 12 o'clock, then?

A. Yes, sir; to the best of my recollection it was about 12 o'clock; I didn't have the time of day.

Q. Came back about two, then?

A. I reckon, or half-past two, somewheres along there about that time.

Q. Didn't you get pretty hungry?

A. I was getting pretty restless setting there; I wasn't going to stay there a great while longer; I had about give them out and had started home.

Q. What time did you pass Colquitt's going west towards this place of killing?

A. I reckon it was along about 9 o'clock.

Q. How did it take you until 12 o'clock, or how did it take you 2 hours to ride down to White's church from Volquit's?

A. I didn't know it taken us two hours.

Q. If you got down to White's church at half-past eleven, and left at 9, that is two hourse and a half.

A. It might have been later than that when we passed Colquit's, or it might not have been quite so late when we met them.

Q. It might have been earlier when you met them?

A. Yes, sir.

Q. You say you rode down there and met Mr. Keyes, and he wanted to know if you wanted some whiskey; how far was that from
328 the White church? How far was it from where you met these people at the cross road to here (indicating on map).

A. I suppose three-quarters of a mile.

Q. That is right, is it?

A. About that far; I will say between three-quarters and a mile, right along there, somewheres, to the best of my knowledge.

(Here map is shown to the jury.)

Q. You know John Huest?

A. Yes, sir.

Q. You know where the Watson field is?

A. Yes, sir.

Q. What is the nearest you were to the Watson field that day?

A. I was here. (Indicating on map.)

Q. About 2 miles is the nearest you were to that field that day?

A. Yes, sir; I reckon that is the nearest I was; anyway I reckon that is it.

Q. Did you see Charley Glass that day?

A. No, sir; I did not.

Q. You saw nobody except the man in the carriage and Keyes?

A. Yes, sir; and Joe Harris.

Q. That is all you saw?

A. Yes, sir; in speaking distance.

Q. Did you see anybody from the time you left Vann's until you got back to Burris', here, meet or see anybody, within speaking distance, from the time you left here and went down here and staid there two hours or two ho'rs and a half, and got the horses and come back here?

A. There is a house here. (Indicating on map.)

Q. Who lives there?

A. I forget the man's name.

Q. Did you see him?

A. I seen two ladies setting in the house, is all that I saw, that is in speaking distance.

Q. Was there any church at White's church that Sunday?

A. Not that I know of.

Q. Were not people passing backwards and forwards to that
329 church, on that day?

A. Not that I seen.

Q. That church is a public place?

A. Yes, sir.

Q. It is in the center of a neighborhood, isn't it; roads converge there?

A. Yes, sir.

Q. Public place; people go back and forth?

A. When there is church they do.

Q. Did you see anybody going to church?

A. No, sir; I don't know that there was any church that day.

Q. You didn't meet anybody going or coming from church?

A. Not that I know of.

Q. How far is it from White's church up to Burris' place?

A. It is about a mile and three-quarters.

Q. From the time you left Vann's you must have ridden about ti you miles and three-quarters or four miles to go to Burris' the way you wer us-

A. Yes, sir; I reckon it would be about 4 miles.

Q. Met nobody on the road except Keyes and this buggy; that is: you met on that 4 miles? rd

A. Yes, sir; and Joe Harris.

Q. What time did you get to Burris'?

A. I got there about half past 2 o'clock I reckon it was; there was no one there when I got there.

Q. From 9 o'clock until half past two o'clock; that is five hours and a half you were travelling the public roads?

A. I was not travelling all the time.

Q. When you were travelling you met nobody on the roads?

A. No, sir; I met nob*doy*.

Q. You saw nobody within speaking distance?

A. No, sir.

330 Q. I would like to find somebody that saw you with Keyes, and that saw Keyes with this buggy riding up the Muscogee road, Keyes and Morgan riding behind that buggy, and all that?

A. They wasn't behind the buggy.

Q. They were in front?

A. Yes, sir; they went before.

Q. They went ahead of this buggy, did they?

A. Yes, sir; the buggy followed after them.

331 Q. People do not move around very much Sunday on these roads up in your c'untry?

A. I reckon there is more or less travelling.

Q. Were you on some by-paths, or trails?

A. On public roads part of the time, and part of the time I don't know whether you would c'll them public roads or not.

Q. That is a prairie country when you get back about that church?

A. Yes, sir; all west of that except the creeks along there.

Q. How far did you say Joe Harris' field is from the Brushy Mountain road?

A. About 250 yards, I reckon.

Q. Can you give a reason why you staid at the corner of the field and didn't stay out in the road?

A. Why, I went 250 yards to the corner of the field and waited for these people to come back. I went down there to get in the shade.

Q. Trees there, are there?

A. No, sir.

Q. In the shade of what, then?

A. The shade of the fence, there is a big post right at the corner of the fence, and I sat by that on a rock.

Q. Why did you not go to the church and get in the shade?

A. That is the nearest ——

Q. No, sir; it is not. It is about the same distance?

A. There is a right smart difference, I think, from the forks of that road to the field, and the church.

332 Q. Pretty hot weather in November in your country?

A. No, sir; it wasn't very hot.

Q. That was a warm day and you were hunting the shade?
A. I wasn't hunting a shade in particular; I didn't stay in the shade here all the time.
Q. What did you stay there for?
A. I told you why, for these parties to come back.
Q. Why 250 yards from the road at that particular place?
A. I knew it would be as good a place as I could stay.
Q. What kind of a fence around that field?
A. Wire up to the corner and then rail; that end of the string next to Joe's house was partly rail and partly wire.
Q. You sat down behind a post and waited for that unknown man to take Sam Morgan off and kill him?
A. I didn't know they were going to kill him; nor I didn't have any idea; if I had I wouldn't let Sam went.
Q. You didn't know they were going to kill that man and send everything to you?
A. No, sir.
Q. Did you know the man in the buggy?
A. No, sir; he was a stranger to me.
Q. Have you ever seen him since?
A. Not that I know of.
Q. Is Will Burt the man?
A. I don't suppose he is.
Q. You heard a man swear yesterday he is the man?
A. Yes, sir.
Q. Why do you swear you don't suppose he is?
A. Well, he isn't like the same man. He is the same complected, and the color of his hair is the same and about the same size man, but the man I met had a long beard. He hasn't any beard at all.
Q. Any other difference?
A. No, sir; I don't suppose there is.
333 Q. You would know the man you were introduced to as Landrum, if you were to see him again?
A. Of course I couldn't swear to the man, nor nobody else could that never seen the man before.
Q. Here is a man could swear to him yesterday positively, that never saw him before. (No answer.) When did you next see Burt?
A. The next week sometime; the man they call Burt, he was there in the cot'on patch picking cotton.
Q. Did you recognize him as the same man that was in the buggy?
A. No, sir.
Q. How was the man dressed in the buggy?
A. Light clothing—I think dark clothing.
Q. There is a great deal of difference between dark and light?
A. It was dark as well as I remember.
Q. Is that the best description you can give?
A. Yes, sir; I didn't pay much attention to the clothing.
Q. White hat?
A. Yes, sir; as well as I remember; I wouldn't swear it was a right white hat, but I believe it wasn't a black one.
Q. (Producing a hat.) That is the hat Sam wore?

A. I don't know; I couldn't swear that.
Q. It looks a little like it?
A. Sam had a new hat when he went off; he got it from Mr. Grid.
Q. Look at that bullet hole. Which way do you think that went in
A. I don't know whether that is a bullet hole or not.
Q. Which way do you think that bullet went?
A. I don't know which way.
Q. Can't you tell? Put the hat on your head.
A. I will not put it on.
Q. Yes; put it on.
A. Take that dirt off and I will.
334 Q. I wish you would.
A. No, I won't; take that dirt off and I will put it on.
Q. Put it on anyway.
A. No, I won't put it on; you put it on.
Q. (Col. Clayton puts hat on his own head.) What do you think of it?
A. Well, if that was a bullet hole, of course, it hit him in the forehead.
Q. Now, you put it on. [Defendant puts hat on.] You don't think that is a bullet hole?
A. I couldn't swear it is.
Q. Look at it good.
A. I don't know.
Q. Look at it good.
A. I couldn't swear it is a bullet-hole.
Q. It could be a bullet hole.
A. It could be made with anything. I reckon a bullet hole would look that way.
Q. Tell me which way that went. You have been handling pistols; now tell me which way that bullet hole went through.
A. How do I know which way?
Q. Look and see.
A. That looks like it went straight through.
Q. Up this way or down that way?
A. Of course, the hole is made from the side.
Q. If the man had it on his head the fellow must have been above him to shoot him, unless he was lying down.
A. I don't know how that would be.
Q. How could he get the bullet in there unless the man was above and had him down in a hole; that is the way it could be done, ain't it?
A. I don't see how the bullet could ever went in there and struck him in the forehead without he was looking up, if he was down in a big hole.
Q. Could you not shoot there and hit him in the forehead?
A. No, sir; I don't think I could; not if I was shooting at
335 a man; I don't think I could do it.
Q. What kind of a mustache did Sam have?
A. Black mustache; a pretty long one.
Q. (Producing part of a mustache.) Take that and examine it.
A. His mustache was n't that long, I don't believe; it might have been that long.
Q. Is that the color?
A. His mustache was longer than that.

I reckon that is not his, then.

I couldn't swear it was.

You think that is longer, and you think it is blacker? You see that ot some of Sam's gore on it and nasty stuff that sloughs off a man's It might be blacker before, you know.

A. It might have been; yes.

Q. So you think that is not Sam's mustache, do you?

A. It may be his; I couldn't swear it was.

Q. Do you know where that hole was that Sam was found in?

A. I knew where they said he was found.

Q. Did you ever see that hole?

A. I remember there being a hole there, right along there that spring, or the spring before that.

Q. You knew the hole was there?

A. Yes, sir.

Q. You knew there was a pretty deep hole there?

A. I knew there was a hole there; I didn't know how deep it was.

Q. How do you get into that field to go to that hole?

A. You would have to go through the field to get there.

A. That would be a pretty good place to keep whiskey, to hide it in that country, where you are not allowed to keep whiskey.

A. I suppose it would be a good place.

A. There is lots of it there, I suppose?

A. I never saw any there.

Q. If a couple of young men we're off on a lark, taking their
336 girls, it would be a good place to go and get your whiskey and take a drink or so before you left, wouldn't it?

A. If the whiskey was there.

Q. Yes, sir; if you kept the whiskey there?

A. If the whiskey was there *if* would be a good enough place, the same as any other place.

Q. How deep was the hole?

A. I don't know.

Q. As deep as a man's head?

A. I don't think it is; to the best of my knowledge it was about 3½ feet deep.

Q. Were you ever in it?

A. No, sir.

Q. You never saw poor Sam in it?

A. No, sir; I never did.

Q. What time of day would you think it was when Keyes came back there with these horses to where you were?

A. About 2 o'clock, between 2 and half past 2, I reckon.

Q. It was about 12 o'clock when they left the white church where you were and went to that place after the whiskey?

A. Yes, sir; about that time.

Q. When Bill came back did he bring any whiskey to you?

A. No, sir.

Q. Did you ask him for it?

A. Yes; and he said they didn't get but two bottles full and these men had taken it with them.

Q. You were waiting for 2 and ½ hours and didn't get a dri[illegible]r you whiskey?

A. No, sir; I didn't.

Q. When you got to Burris' with those horses you were entirely so[illegible] Mus-

A. Yes, sir.

Q. Was there any whiskey down at Grider's that day? [illegible]rd

A. Not that I know of.

Q. Did you got any whiskey that day?

337 A. I got some that evening over at Black Hoyt's; when Hoyt came there he had a little bottle fill', and I went there and staid all night there.

Q. When you got back you left one horse with your step-daddy?

A. Yes, sir.

Q. Why did you leave it there?

A. For him to keep until Sam came back.

Q. Sam told Keyes to have you leave that with your step-daddy?

A. Yes, sir.

Q. Why did he not have it left with somebody else?

A. I don't know.

Q. How old is your step-daddy?

A. I reckon he is about 60 years old.

Q. Is your mother living?

A. No, sir.

Q. How old was Sam?

A. I don't know; I would guess him to *ne* somewhere in 30, 34, or 35.

Q. What conversation did you have with Joe Harris when you met him while you were waiting for this whiskey?

A. He just asked me what I was doing there, and I told him I was waiting for Sam and Keys to come back, they had gone after whiskey. He says, "Well, when they come come down to the house and I will take a drink with you," and he rode right off.

Q. Did you see Frank Lawless that day?

A. No, sir.

Q. Did you not see him at all?

A. Not that I know of.

Q. Well, you made an affidavit here in which you state that, by Lawless, that on the afternoon of the day that deceased was missing, that he saw you alone and afterwards saw Morgan, the deceased, and an unknown man and two women riding in a buggy together. Your name is Bood Crumpton?

A. Yes, sir.

Q. Well, it is sworn to by you?

A. I didn't know I could prove that.

338 Q. What did you swear to it for?

A. All I know about it was from letters Col. Cravens got up there and told me about this.

Q. If that was you "alone" then you saw him?

A. I don't know whether he seen me or not, but I didn't see him.

Q. And yet you are willing to swear he saw you alone. How do you explain that?

A. Col. Cravens got letters from the people up there. I didn't know what he could prove.

Q. Where is the letter you got from Morgan after he was dead?

A. They lost it the night I was arrested.

Q. Who lost it?

A. It was lost by a fellow that was riding behind me?

Q. How did he happen to have it?

A. He had my vest.

Q. Who is he?

A. His name was Robinson. The last I saw of him he was at the jail; he claimed to be a United States detective. I made known about the letter next morning after I was arrested, and they said they would put out notice for it, and find it if they could.

Q. At any rate you are the man that had it last. Now, where did you get that letter?

A. Out of the post office at Muscogee.

Q. What did you show it to Harris Robinson for?

A. I did not show it to Harris that I remember of.

Q. Not Harris, but to Burt?

A. Well, I had the letter in me pocket, and was out in the cotton patch where he was, and I said I got a letter from Sam.

Q. What did you want to show it to Burt for?

A. He claimed to be his cousin, and asked me for the letter.

Q. How did he know you had the letter?

A. I told him; he was asking something about Sam, and I told him I got a letter from him.

339 Q. Is there any other man got a letter from Sam except you in that country?

A. I don't know whether there was or not.

Q. I wonder why he wrote to you and nobody else?

A. I don't know that either.

Q. No other person ever professed to get a letter. He had a brother there?

A. Yes, sir.

Q. And a cousin there?

A. He claimed to be a cousin.

Q. And Sam was dead, and his ghost writing you letters?

A. I don't know a ghost could write letters, and I didn't know he was dead at that time.

Q. You know it now?

A. I don't know it now. I can't swear. They said it was him.

Q At that time where were you living?

A. At Black Hoyt's.

Q. How long did you remain at Hoyt's?

A. I staid there off and on all the time up till Christmas.

Q. Until the very day the body was found, didn't you?

A. Until the day they said it was found.

Q. Then you left?

A. I went off next morning.

Q. What did you go for?

A. I hadn't heard it was found.

Q. The whole country heard it but you?
A. I don't know who heard it; I didn't.
Q. What were you doing on the Sunday the body was found when the people were talking about it in your presence?
A. They were not talking about it in my presence.
Q. Where were you that day?
A. At Mrs. Harris', and a fellow by the name of Silks, and Mrs. Nicholson's, and Ed. Williams', and McDaniels.
Q. And you staid all night at Mrs. Harris'?
A. Yes, sir.
Q. Right in the same room with Kit Harris?
A. Yes, sir.
340 Q. Who all did you see that afternoon?
A. I don't know as I could call over all the names.
Q. You saw a good many people, didn't you?
A. I didn't see a great many.
Q. Did you go to bed after Kit went to bed?
A. Yes, sir.
Q. And you got up in the morning and left without breakfast?
A. Yes, sir.
Q. What did you do that for?
A. Well, I told my half-brother I would go out there in the morning and I wanted to see him to set me across the river.
Q. You did not have to go that early to get set across the river?
A. He said he had to go to Muscogee that day and for me to come early.
Q. He didn't cross the river to go to Muscogee?
A. No, sir.
Q. Who is your half-brother?
A. Jim Burris.
Q. Where does he live?
A. His father is my stepfather.
Q. Old man Burris?
A. Yes, sir.
Q. How far does he live from the river?
A. About a mile.
Q. Well, he does not run the ferry, does he?
A. No, sir.
Q. What did you want him to set you across for?
A. We were aiming to ford the river.
Q. Well, but he didn't go that way to go to Muscogee?
A. No; but he told me to come early.
Q. If he goes across the river he goes the opposite direction from Muscogee?
A. Yes, sir.
Q. Why could you not cross the river yourself?
A. He said he would set me across the river if I come down early, and I went and he set me over.
Q. Is that the only reason for going before breakfast? Where
341 did you get breakfast?
A. At old man Burris'.
Q. Why did you not stay all night at old man Burris'.

A. We didn't leave Black Hoyt's until after dark.

Q. I know, but you came to Mrs. Harris' after the others had gone to to bed. Why did you not go to Burris' and stay all night there?

A. I didn't like to walk down there so late.

Q. Better do that than get up before breakfast?

A. I would have daylight to walk in.

Q. Your half brother was living down at Burris'.

A. Yes, sir.

Q. How old was he?

A. 15 or 16.

Q. There was your stepdaddy's, and you didn't stay all night there, but went to the other place and got up before daylight?

A. No, sir; it was after daylight when I waked up.

Q. And left before the other people got up, and before getting breakfast?

A. They always had a late breakfast.

Q. And you left the country, and that was upon the morning after the body was found on the day before?

A. Yes, sir; that is what they say.

Q. That is singular.

A. I didn't know they had found the body or anything about it.

Q. Whose place did you go to?

A. I went to Bragg Station and from here to Smith's; Isaac Smith's.

Q. Is he a white man or an Indian?

A. An Indian.

Q. A full blood?

A. I don't know; he lives right on the edge of the prairie, right on the Gibson and Falls road.

Q. When were you arrested?

A. The day after Christmas; it was on Friday.

Q. You have heard all these people that have been on the stand testify as to what what you said about it. They all say you said
342 nothing about meeting Keyes until after you were arrested. Now why is it you didn't tell them about meeting Keyes before?

A. Well, I did tell them—I think I did.

Q. You swear now you did?

A. I wouldn't swear I did tell them.

Q. Did you hear a single witness testify you said anything about Keyes until Burt came on the stand and said you told him after you were arrested you met Keyes on the prairie?

A. I think there was.

Q. Name him. Was it Mrs. Harris, Kit Harris, Grider? Was it Hoyt or Colquitt?

A. I don't know I could name him, but I believe Kit Harris and Grider said so.

Q. Did you hear them say so on the stand?

A. I aint positive.

Q. As a matter of fact no witness testified to it but Hurst, and he says you didn't mention it until after you were arrested.

A. I told it before I was arrested—I know I did.

Q. You staid all night with Sam, did you not, the night before he was killed?

A. Yes, sir.

Q. Did you see him take out his money in the presence of Mrs. Harris and count it that morning?

A. No, sir.

Q. $10 bills and a handful of silver?

A. No, sir.

Q. You play cards a little?

A. Sometimes I do.

Q. Do you remember having a game with one of these witnesses who won $2.00 from you after Sam Morgan was killed?

A. Yes, sir.

Q. Do you remember paying him 3 half dollars?

A. No, sir; I don't remember.

Q. Where did you get that money?

A. I got it from Bob Morgan in the presence of Will Burt.

Q. You yourself got it from Bob Morgan?

A. Yes, sir.

343 Q. The witness testified he had loaned Sam Morgan $2.00, three one-half dollars and the other ½ dollar in small money, and he testified that after Sam's death he played a game of cards with you and won from you, and you paid him 3 ½ dollars and a ½ dollar in small money.

A. I got three ½ dollars from Bob Morgan.

Q. When?

A. I got it from Bob Tuesday week after that, I believe.

Q. After what?

A. After me and Sam went off that morning, on Tuesday after he had the attachment run on the horses, as well as I remember.

Q. Kit Harris says that when you left that morning that you were riding the spotted horse and Sam Morgan the gray; is that right?

A. No, sir.

Q. What time was it you got to Grider's?

A. Between 3 and 4 o'clock.

Q. Was Grider there?

A. I don't know—no, he wasn't there.

Q. Did you see him while you were there?

A. Yes, sir.

Q. How long did you stay there?

A. I reckon ½ hour.

Q. Who else did you see?

A. Kit Harris and Ed Williams and John Wyatt and Black Hoyt. Black Hoyt came there late; he came in about ½ hour after I got there; about 4 o'clock; I don't know exactly.

Q. Was there anybody with you when you got that letter from the post office?

A. I don't know whether anyone went with me to Muscogee that day or not.

Q. What did you go to Muscogee that day for?

A. I don't know what I did go after; I told you what I went after that day, for some candy for a party.

344 Q. Where was that party given, or when?

A. I don't know the day of the month.

Q. Was it in December?

A. Yes, sir; I believe it was; I won't be positive.

Q. How long had you that letter before you showed it to Bob Morgan?

A. I got it the day that party was that night, and the next evening I showed it to Burt, and the next day I showed it to Bob.

Q. Then, if it was along about the first week in December that you showed this letter to these parties, you got it about that time?

A. Yes, sir; I ain't positive, though it was in December.

Q. But you showed it to them right away. They have testified it was about a month after Sam disappeared?

A. I don't believe it was a month afterwards.

Q. Do you remember what was in that letter?

A. No, sir; I don't remember all.

Q. When was it dated?

A. I don't remember.

Q. Where was it written from?

A. Pawnee Agency, Indian Territory.

Q. Was the postmark on the envelope?

A. Yes, sir.

Q. Did you ever show that to anybody?

A. I think Ed Williams, and Ed Williams he handed it to his children.

Q. He is not here?

A. No, sir.

Q. What relation is Ed Williams to you?

A. Not any.

Q. His wife is?

A. Yes, sir.

Q. Tell me what it is.

A. Cousin.

Q. You showed it to those people next day. What had become of the envelope at that time?

A. Why, I gave it to Ed Williams; he was looking at the letter
345 and the envelope, too, and the little boy was 'tanding beside him, and he handed him the envelope.

Q. Then Ed saw the envelope?

A. Yes, sir.

Q. He would know whether or not that envelope was directed from the Pawnee Agency, wouldn't he?

A. I suppose he would if he looked at the postmark.

Q. And that is the only man that would know?

A. Yes, sir.

Q. If it was destroyed that day? It was destroyed?

A. I don't know

Q. The gentleman you sh'wed the letter to you didn't show the envelope?

A. No, sir.

Q. If you had had that letter in the envelope it would have shown where it was sent from?

A. It did show where it was from.

Q. But when you showed it to these gentlemen here you did not have the envelope then, and it was only next day after you got it?

A. Yes, sir.

Q. Had you got many letters?

A. No, sir; I didn't have many.

Q. How often had you gotten letters?

A. Well, every week or 2, or 3 weeks.

Q. Do you remember Burt asking you to see the envelope, and Colquitt?

A. No, sir.

Q. You heard them testify they did?

A. Yes, sir.

Q. You could not produce it?

A. I wasn't asked for it.

Q. How did they learn the child destroyed that envelope if you did not tell them?

A. I don't know how they learned that.

Q. It looks like they did ask for it. When you saw the child tear it up; they did tear it 'p, I reckon?

A. I didn't see it any more after that.

Q. They went on the stand and said you gave that reason then, so it looks like they were not lying about it?

346 A. They did not ask me for the envelope.

Q. But you told them it was destroyed without their asking you for it?

A. No, sir.

Q. How did they learn it?

A. I don't know.

Q. How did they learn that envelope had been destroyed by Williams' children?

A. I don't know.

Q. Strange they would find it out?

A. I might have told it afterwards; I didn't tell it then. They might have asked me after that.

Q. Why would they ask you?

A. I don't know.

Q. Did they ask you after that?

A. I don't know.

Q. Did they ask you after that?

A. Not that I know of. I wouldn't swear they didn't ask me about it.

Q. But you swear they did not ask you on that day about it?

A. I know they didn't ask me that day.

Q. What were you doing going around telling the people the children had destroyed that envelope?

A. I wasn't going around telling that.

Q. They learned it somehow or other, and they say you told them. They said you made the same claim you make now?

A. I didn't claim I told them that day.

Q. You claim the children destroyed the envelope, they said you told them so?

A. I never saw the envelope since. I may have told them that after that, and I don't ever remember telling them at all.

Q. As a matter of fact you didn't tell them on that day?

A. I know if they asked me, I would have knowed.

Q. If they asked you about it at another time you would have remembered it?

A. I think so.

347 Q. Might you not have forgotten they asked you for it? Were you thinking about the envelope?

A. No, sir.

Q. Did it make as much impression on your mind as that you are willing to swear that you 'an remember that thing, that they did not ask you for it? Which part of the envelope was destroyed by the children?

A. I suppose it was al' destroyed; I didn't see it any more after that.

Q. So you were carrying the letter without any envelope?

A. I had the letter.

Q. That purported to come from the man that was deazd when it was written?

A. I didn't know he was dead.

Q. That letter you kept up to the day you were arrested, and then it disappeared and you can not account for it?

A. I did account for it and how it was lost.

Q. Tell me what was in the letter?

A. I can tell part; he wanted to know how everything was getting along, and his girl was getting along; how his spotted horse was.

Q. And told you what to do with it?

A. He told me to turn that horse over to Colquitt; he told me to turn the other horse over to his brother and take Ramsey's name off the note.

Q. That is about the statement these men make that you told them. So the letter just stated what you claimed when you brought the horses back, that he had told you.

A. Not exactly that way.

Q. What is the difference?

A. Well, he told me——

Q. He told you to leave a horse at Burris'?

A. Yes, sir.

Q. Who told you?

A. Keyes; he said to let that horse stay there if he wasn't back by Christmas, and let Colquitt have that horse back, and would pay for feeding it.

Q. That is what the letter said?

A. No, sir.

348 Q. What did Keyes tell you about the gray horse?

A. If he wasn't back there by the first of December to let Bob have that horse.

Q. What did he say about the crop?

A. For me to gather it and pay Kit Harris $20.00, and Grider $5.00, and Hoyt 2 dollars, and to pay his hands for picking out of it, and pay myself, and if any left to let Bob Morgan have it.

Q. What did the letter say about the crop?

A. The letter said: I reckon you got it about gathered. He told me to say how much it made.

Q. That letter was sent from the Pawnee Agency to you?

A. Yes, sir; that is what it said.

Q. Had you written to the Pawnee Agency or sent anybody up there to send you that letter?

A. I wrote to the Pawnee Agency twice to Sam Morgan.

Q. What became of the letters?

A. I don't know.

Q. Were they ever returned to you?

A. I don't know that they have.

Q. Did you write to anybody else in the Pawnee Agency?

A. No, sir.

Q. Since you have been arrested have you written?

A. No, sir.

Q. Have you had your lawyers write up there since you have been arrested?

A. No, sir.

Q. Have you sent anybody up there to see if he is there?

A. No, sir.

Q. Do you know Sam's handwriting?

A. No, sir; I don't.

Q. You never saw him write?

A. I seen him write the names of his cotton-picking hands down.

Q. Was the letter in Sam's handwriting?

349 A. I couldn't swear it was or not.

Q. (Selecting words from a paper.) Spell please.

A. P-l-e-a-s-e, is the way I spell it.

Q. You wrote this order that we produced here yesterday?

A. Yes, sir; I reckon I did.

Q. I notice that you did not spell please that way here, but p-l-e-a-s. Spell pistol.

A. P-i-s-t-o-l.

Q. You have learned how to spell it since. It is p-i-s-t-o-l-e here. Spell redeemed.

A. R-e-d-e-a-m-e-d, is the way I spell it.

Q. When Mr. Keyes brought those horses to you where were you?

A. Right there in about 100 yards at the corner of Joe Harris' field, standing on a knoll.

Q. What did he do with the horses?

A. Turned them over to me.

Q. What became of him?

A. He went right back towards Joe Harris'.

Q. What road did he come down when he brought the horses back?

A. When I seen him he was in no road at all, coming from towards Harris, Joe Harris', the same direction they went off. They went off on the road that went right straight off towards that road.

Q. What horse was he riding?

A. The gray horse.

Q. When he turned them over to you, you got on which horse?

A. The gray horse and led the other.
Q. And took them up to Burris'?
A. Yes, sir.
Q. You came back in an opposite direction from what you went off?
A. Yes, sir.

Q. When you came home with the dead man's horses you came
350 upon a different road and in an opposite direction from the one you left?

A. Yes, sir.
With the declaration on your mouth that you were to keep them until December?
A. He didn't direct me exactly to be in my possession entirely; he said take it to Black Hoyt's and there let it stay until December, then it is to be turned over——
Q. You are changing it a little. In whose possession?
A. I was to take care of it, of course.
Q. When did you take it to Black Hoyt's?
A. Upon the same day.
Q. What time of day?
A. About sundown, or a little before.
Q. You were riding it all the afternoon?
A. Off and on part of the time, and part of them standing and setting around.
Q. When the horses wasn't hitched you were riding it; the next day it was taken from you?
A. No, sir; the day after that, Tuesday.
Q. Do you know what he wanted you to leave one of the horses at Burris' for?
A. For him to keep and take care of until he came back.
Q. Did you tell Burris?
A. Yes, sir.
Q. Where is Burris?
A. He is here.
Q. You told Burris to feed him and take care of him?
A. Yes, sir; and Sam would pay him.
Q. Had Sam lived with Burris?
A. He never lived there; he was there right smart.
Q. Why did he not send both of them to Hoyt's?
A. I don't know.
Q. Which one of the horses did he get from Hoyt?
A. The gray.
Q. Where were you on the Sunday before this?
A. I was at Black Hoyt's, I reckon.
Q. Did you ride along that road the Sunday before that?

A. No, sir; I don't think I did; I might have walked down
351 to Mrs. Harris' and back.

Q. Did you see anything of Charley Glass on that day, on the day Morgan disappeared?
A. No, sir; I didn't.
Q. Did you see anything of a man named Brown?

A. No, sir; I seen Brown a week before that, though.
Q. Did you see anything of this man John Hurst on that day?
A. No, sir; not that I know of.
Q. Nor Lawless?
A. No, sir.
Q. You know Hurst, don't you?
A. Yes, sir.
Q. On the 3rd of November you did not see him?
A. No, sir.
Q. You didn't pass by Watson's place, you and three other men, riding on horseback?
A. No, sir.
Q. Riding over towards Davis'?
A. I wasn't in the crowd.
Q. How far is it from Wolf's to the hole where this body was taken from?
A. I reckon two miles; maybe a little further.
Q. How far is it from that hole to the ford.
A. I reckon it is a mile and a half.
Q. How do you get into that fiield?
A. You have to cross the creek, and upon the second bench it is about 150 yards from the corner of Watson's field; at a little house the roads fork; there one goes to Muscogee and one down the field; one goes into his field.
Q. Is there any way to get on to the sand bar near where Morgan was killed?
A. No, sir; not without going down below, down near the mouth of the creek.
Q. You could then get on the sand bar without a horse, could you?
A. Yes, sir.
Q. If a horse did some dropping on the day this man was killed,
352 they would have to get on it that way; that is the only way they could have gotten on?
A. They could have got on the bank of the river from Davis' and go down that way; the cattle and horses always go that way.
Q. Is it sand bar along there from Davis' up?
A. No, sir.
Q. Then you would strike deep water?
A. Not the time of low water they wouldn't?
Q. Then you could have gotten down there by going back by Davis'?
A. And go through the lane right by the house; I don't know whether they could go at that time or not.
Q. How far is Davis' from the place where the hole is?
A. About three miles.
Q. How many girls are there down at Davis'?
A. Three.
Q. Did you see them that day?
A. No, sir.
Q. Why did you not go down and see them?
A. Well, we met up with these parties, and they went after whiskey.

Q. Why did you not go down the evening after that; you dressed yourselves to go and see these girls; why did you not go and see them?

A. I told you why.

Q. Because they were led off after something better?

A. I didn't get anything.

Q. You started to see thee girls and didn't see them, and they started to get the whiskey, and you didn't get the whiskey?

A. No, sir.

Q. But you did get the property of the man that was killed?

A. They claim he was killed; I don't know.

Q. The thing you didn't go to get, you got, and that you went to get you did not get. You got his horses and took them back home. Is there any man living that you have ever seen or heard of that saw this
353 man Keyes with these two horses that he was leading up there to you?

A. No, sir; I never made any inquiry about it at all.

Q. No living man ever saw Keyes in possession of these two horses, that you ever heard of?

A. No, sir.

Q. Have you ever seen or heard of a man who seen or met these people in the buggy as they were all riding together after the whiskey, except this man Hurst who put you in the crowd?

A. No, sir.

Q. Where they were gone 2½ hours from you. You nevrr learned of anybody that saw them, and you never saw anybody but your cousin and Joe Harris. When Keyes came there and turned over to you those horses, you were about 100 yards from the field; were you in the road?

A. No, sir.

Q. Could you see over the knool you were standing on in the prairie?

A. I could see 15 or 20 miles in different directions, southwest of that I could.

Q. How far could you see in the direction in which these men left you to get the whiskey?

A. I could see about 200 or 300 yards, to the top of the hill towards Joe Harris' house.

Q. If you had gone on top of that hill how far could you see?

A. If they kept in the same direction they went I couldn't see over a quarter of a mile.

Q. Did you go on top of that hill when you got restless and tired of wa'ting?

A. No, sir.

Q. Why?

A. I didn't think it was a'y use to go up there.

Q. You had dressed to go and see some nice girls, and you lay in the corner of the fence for 2½ hours waiting for whiskey; you thought more of the whisky than you did of the girls, and you thought enough about them to go to see them 3 or 4 miles. Why did you not go to the top of
354 the hill and look for the men and see if they were coming, then you could have told how far this man was coming along the prairie with the horses?

A. If I went up I couldn't see them.

Q. What did you go to the top of the knoll for?

A. I started home; I got restless staying there, and about give them out, and started towards home.

Q. Yet you wouldn't go on top of the hill and look and see if they were coming?

A. No, sir; I didn't do that.

Q. How far was the hill from you?

A. 200 or 300 yards.

Q. Where did you start?

A. Towards home, of course; I was aiming to go home.

Q. You had started to go home on foot without going to the top of the hill to see if the parties were coming. You expected them to come?

A. I did.

Q. You believed they were going to come?

A. Yes, sir.

Q. Then you thought you would get a ride home if they come?

A. Yes, sir.

Q. You started home without even going to the top of the hill, 200 yards away, where you might have had a view of a ¼ mile away to see if they were coming. How far could you see in that direction from the top of the knool?

A. To the top of the hill.

Q. How far was that knoll from the church? Had you got to the road?

A. Not quite; no, sir.

Q. How far is that road from the Brush Mountain road?

A. About 100 yards.

Q. Then that field must be 300 yards from the road?

A. 250 yards, about.

Q. What direction from where you were standing was that hill you speak of?

355 A. It was east; it run east and west there, the hill did.

Q. How far was that from any woodland?

A. There was wood all around Joe Harris', the closest would have been about 400 yards.

Q. How far is the church from the Brush Mountain road?

A. One place it ain't over 100 yards, and another place about 250 or 300 yards.

Q. When you were in that prairie waiting for these men to come back, had you any fear or any apprehensions that anything was wrong?

A. No, sir; only I just supposed they got the whiskey and got drunk, and maybe had gone somewhere else.

Q. When they left did you have any fears or apprehensions?

A. No, sir.

Q. You didn't think there was any danger of the're being arrested at that time?

A. No, sir.

Q. You didn't care whether you were seen or not?

A. No, sir; I didn't care who seen me.

Q. You were not hiding?

A. No, sir.

Q. You were not secreting yourself when you were sitting in the corner of the fence?

A. No, sir.

Q. You would have spoken to anybody that passed by you that you knew?

A. I would.

Q. If anybody had travelled along the road you would not have tried to keep out of the way of them?

A. No, sir.

Q. You did not try to avoid being seen?

A. No, sir.

Q. Can you tell why you were not seen?

A. If you had been out on the prairie and anybody came along, of course you might not have seen them.

356 Q. If I had been there for 2½ hours, if it is a very public place of that kind I would have seen them.

A. I seen Joe Harris close enough to speak to him.

Q. Joe is a relative. Anybody else?

A. West of there I seen several riding along the roads.

Q. Who were they?

A. I don't know; they were ½ mile or may be a mile from me.

Q. I am speaking about those roads right about you. How far were you from the corner of the road where it goes into the Brush Mountain Road [showing map]? There is the church, and this is the road they started off on, and there is the corner of the field?

A. It was about half way.

Q. How far is it from the corner of that field to the corner of that road where it intersects the other road?

A. Near 300 yards.

Q. In plain view?

A. Yes, sir; back that way.

Q. Plain view down the Brush Mountain road?

A. Part of it

Q. You were in sight of three different roads?

A. That Brush Mountain road, recollect that ain't a public road.

Q. That is the road you were travelling that day?

A. Yes, sir.

Q. And there is the Brush Mountain road and the Muskogee road, that is a public road. And that went up to the side of the field is a public road. All three in sight of you?

A. Yes, sir.

Q. And the church house right there?

A. Yes, sir.

Q. And you were there about the time the people would go to meeting if they had meeting?

A. Yes, sir; I reckon about church time—a little after church time, I reckon.

Q. Did you hear any shooting that day?

A. Not until I got back in the bottom.

357 Q. You heard no shooting over where you were?

A. No, sir; not while I was on the prairie; I didn't that I paid any attention to.

Q. Did you hear any man moan?

A. No, sir.
Q. Nobody shot?
A. No, sir.
Q. Nobody killed?
A. No, sir.
Q. You were very much surprised when you heard Sam was killed?
A. Yes, sir; I was; I hated it as bad as being one of my brothers.
Q. When the body was found there you did not go to it?
A. I didn't know it was found until after.
Q. You went in an opposite direction across the river? You put the river between you and the body?
A. Yes, sir; there was——
Q. How far is Mrs. Harris' from where the body was found?
A. 4½ or 5 miles.
Q. When was the last time you were at that hole?
A. When we were making fence there.
Q. When was that?
A. The spring before that, I believe.
Q. That is the last time you were ever there?
A. Yes, sir.
Q. You would like to go up and see it, wouldn't you?
A. I wouldn't care about going just to see that place.
Q. You have never been near it since Sam was killed have you?
A. I wasn't there then.
Q. I did not say you were. I say since then?
A. It was a long time before it.

CHARLEY VANN.

Mr. WOLFENBERGER. Where do you live?
A. Weber Falls.
Q. How long have you been living up there?
A. About 2 years, I guess.
Q. Where is your mother living?
358 A. She lives near Muscogee, 7 or 8 miles from Muscogee.
Q. Where did you live from Mr. Hoyt?
A. 200 or 300 yards I guess.
Q. You know Black Hoyt, do you?
A. Yes, sir.
Q. Do you know where you were on last November?
A. I was up there in the bend about that time; I left there and went to the Falls about the 15 or 16th of November.
Q. Do you know this defendant?
A. Yes, sir.
Q. Were you acquainted with Sam Morgan, the man supposed to be missing.
A. Yes, sir.
Q. Did you see Sam Morgan and this defendant together on November 3rd?
A. I couldn't say whether it was November the third or when it was. I saw them on Sunday together in November.

Q. Where was it?
A. I saw them at my place.
Q. What were they doing?
A. They came by there that day on horseback.
Q. Do you know whose horses they were riding?
A. Supposed to be Morgan's. He claimed them, I think.
Q. Anybody else at your place when they came there?
A. Yes, sir; several, I don't know who all, though. I believe Jim Lowry was there, and maybe Bob Morgan.
Q. You don't know whether he was there or not?
A. No, sir.
Q. Was Sam Morgan there?
A. Yes; he was there.
Q. Was Black Hoyt there?
A. Yes, sir; I think he was.
Q. What doing there?
A. We were all fooling around the stable; some of them was playing cards.
Q. Do you know whether this defendant took a hand in the game or not?
A. I think he was a little while; he and Morgan both.
359 Q. Did he borrow a pistol from you at any time before that time?
A. Yes, sir.
Q. Do you know when he returned the pistol to you?
A. Yes, sir; I can't recollect exactly when he did return it; I know it was some time, 2 or 3 weeks, after he borrowed it he brought it back. When he brought it back it was half empty, and I made the remark to him he ought to bring it back loaded like he got it.
Q. You say the defendant was there on Sunday playing cards there?
A. Yes, sir.
Q. Did you see him with a pistol there?
A. I don't know whether I did or not.
Q. What is your best opinion?
A. If he left the pistol there with me, I saw it, of course.
Q. Did he leave it there?
A. I don't know.
Q. Are you friendly towards this defendant?
A. Yes, sir.
Q. Were you friendly to Sam Morgan?
A. Yes, sir.
Q. Friendly towards Bob Morgan too, are you?
A. Yes, sir.
Q. What time was it when he was there playing cards?
A. Sometime before dinner, I expect 9 or 10 o'clock.
Q. Did you see him leave there?
A. Yes, sir.
Q. Which left first, Morgan or the defendant?
A. I think Morgan got on his horse and rode off first, and got up on the hill a piece and hollered for Bood to come on, or something like that.
Q. You can't say whether he left the pistol there that day or not?
A. No, I would not swear it.

Cross-examination:

Col. CLAYTON. You ought to remember something about that pistol, when he returned it to you, if you can remember that the cards were
360 being played on that day, and if you can remember the defendant taking a hand, and if you can remember Morgan rode right off ahead of him, and that you were at the stable, and you spoke to him about it. Where were you at the time you spoke to him about it?

A. On my place there to the best of my recollection.

Q. Were you at the stable?

A. I could not swear.

Q. Did he bring it back to you on a Sunday or a week day?

A. I could not say.

Q. Was it before or after Morgan was killed?

A. To the best of my recollection it was sometime about the first of November.

Q. Was it before or after Morgan was killed?

A. I don't know, sir.

Q. There is no way you can fix the time. Do you have any recollection of his handing you the pistol that day at all?

A. No, sir.

Q. Were you playing cards?

A. I think I was in the game a little while.

Col. WOLFENBERGER. Were you drunk that day?

A. No, sir.

(Adjourned until 1.30 p. m.)

361 SATURDAY, P. M., 1.30 o'clock, *May 31st*, 1890.

W. H. BURRIS.

Mr. WOLFENBERGER. Where do you live?

A. Up in Canadian District; up close to Muscogee.

Q. Are you a citizen up there?

A. Yes, sir.

Q. How long have you been living there?

A. I have been living there, it will be 12 years this coming November

Q. Where did you come from?

A. I come from northwest Georgia, Walker County.

Q. Do you know this defendant?

A. I guess I ought to know him.

Q. Do you know him?

A. Yes, sir.

Q. How long have you known him?

A. I have known him ever since he was a little bit of a chap this high; ever since I married his mother.

Q. Are you any kin to him?

A. None at all of his.

Q. Go on and tell the jury all you know about this case; if you know anything tell it.

A. I don't know anything about the case, as I know of.

Q. Do you know where he was on the 3rd day of November last?

A. On the 3rd day of November he was at my house in the evening, late.

Q. What time in the evening?

A. About half an hour by sun.

362 Q. Were you at home all that day?

A. I was at home just a few minutes after he got there; I had been out and got back, in may be a little before half an hour by sun.

Q. What did you find in your lot when you got home?

A. I found one of Mr. Morgan's horses.

Q. You don't know who put it in there?

A. No, sir; I don't know anything about it.

Q. You say this defendant came back to your house that evening about sundown?

A. He came back to my house after I got home, between half an hour by sun and sundown.

Q. Was there anybody with him?

A. Black Hoyt was with him.

Q. When did you have the first conversation with him after you found that horse in the lot?

A. Right that evening; there wasn't but few words passed between us.

Q. I am asking you to tell the jury what he said; tell the jury about that.

A. He says to me, Sam Morgan, the deceased, said, to keep this horse a month or a little over, and if he is not back here by that time to turn it over to Bob Morgan and make him pay me for his trouble. That is just what he told me.

Q. Did he tell you who turned the horse over to him?

A. No, sir; he never told me anything about that.

Q. What color horse was it he left at your house at that time?

A. A spotted horse.

Q. You say you don't know where he was on that day only in that way?

A. No, sir; I don't know anything about his whereabouts only that few minutes.

Q. Do you know anything about where he was about Christmas?

363 A. He was knocking around over the settlement there; I don't know where he was.

Q. From the time he come there and put that horse in the lot up to Christmas, where had he been staying during that time?

A. He had been staying down, I believe, to Black Hoyt's.

Q. On the 22nd day, I believe it was, on Sunday, of December, I believe it was, that the deceased man's body was found; do you know where this defendant was about that time; did he come to your house any time about that time?

A. He come by there and asked me to let one of the little boys—let me see—yes, that was before I heard the body was found; he come to my house and asked me to let one of the little boys go with him across the river to the railroad; that he was going over there in the settlement to a party.

Q. That is before you heard the body was found?

A. Yes, sir.

Q. Take him over to the station somewheres, was it?

A. Yes, sir; over there somewheres to the station; he didn't call any particular name; didn't tell me exactly.

Q. Did he go soon in the morning or late in the day?

A. Soon in the morning, my recollection is.

Q. Do you know the general reputation of this boy in that settlement there for being a peaceable, law-abiding citizen?

A. The general character of that boy has been an average character ever since he left my house, since he quit me; he was as good a boy as ever lived—before he left me—he was as good a boy that as was ever raised; that is all there is of it.

Q. He worked for you, I suppose?

364 A. Yes, sir; he worked for me and lived with me until he was about 15 or 16 years old; 16 or 17, somewheres along there; I don't know the exact number of years he was old when he left me; it has been an average character ever since, to the best of my knowledge.

Cross-examination:

Col. CLAYTON. What do you call an average character?

A. Person with an average character—what I call an average character for a young man is a person that can just keep anybody's company that he wishes for.

Q. That is what you think is an average character?

A. Yes, sir.

Q. What do you think is a good character; if that is an average character, what is a good character?

A. I don't know what you would call a good character.

Q. It would have to be better, something a little better.

A. It would have to be better than that to call it a good character.

Q. Then he wasn't a boy of a good character?

A. I called him a good character, but the neighbors said he was an average character. He was an average with any of the boys in the country.

Q. You say that good character is better than average character; therefore, he is not of good character.

A. He was average with the general run.

Q. Before he left you he was a good boy?

A. He was; yes, sir.

Q. After he left you he got a little wild?

A. It is common for boys when they leave their parents to get wild.

Q. Have you ever talked to Mr. Wolfenberger about this matter?

365 A. I have never spoken particularly with him about it.

Q. I suppose you have talked about it?

A. Yes, sir; talked a little.

Q. You told him this boy was an average character boy, did you not?

A. Yes, sir; I did.

Q. When did you say that Sam Morgan was killed?

A. Well, sir, I heard it next day after that boy come across the river from my house; the next morning is when I heard it.

Q. You heard it the very morning he left?

A. No, sir; the next morning after he left.

Q. What day was that?
A. I don't recollect, sir.
Q. The day before Christmas?
A. I don't know; I can not recollect what day it was.
Q. How do you know it was the day after he was there?
A. I know it was.
Q. How do you know that? Were you at home when he left his horse there?
A. No, sir.
Q. He told you he had left it there, did he not?
A. Yes, sir.
Q. He didn't live with you, then?
A. No, sir.
Q. How long has it been since he lived with you?
A. I can not tell that.
Q. What did he leave the murdered man's horse with you for?
A. I can not tell that niether; I don't know.
Q. It turned out to be a murdered man's horse; it turned out to be a horse of a man murdered the very day you got it, didn't it?
A. I don't know about that.
366 Q. I don't suppose you know anything about that. When the body was found, did you go over to see it?
A. No, sir.
Q. Why didn't you go?
A. I didn't think I had any business up there.
Q. Your neighbors went?
A. It was three or four miles out of my settlement.
Q. The people right in your settlement went up there?
A. I had no business up there; that is the reason I didn't go.
Q. No business up there; to go and help to bury a man who was murdered, a man you knew. You knew the man pretty well?
A. Tolerable well.
Q. When did you first learn your stepson was accused of this thing?
A. Not until after he got across the river from my house; I heard it after he left my house to go across; and the next day I heard the body was found.
Q. I asked you when you first heard your stepson was accused.
A. The next day after I heard it; after I heard the body was found I heard he was accused of it.
Q. The day after the body was found?
A. Yes, sir.
Q. That is, the day after he left your place?
A. Yes, sir; that is what I say.
Q. The body was found the evening before he left your place?
A. Yes, sir.
Q. Then he come there and left your place, and that is the way you heard it, wasn't it?
A. No, sir; that was the day after he left there as the day I heard it.
Q. Why did he want your boy to put him across the river so early in the morning?
367 A. He wanted to go over in the settlement, he said.

Q. What did he want to go so early for?
A. I don't know.
Q. Did your son put him across?
A. Yes, sir.
Q. What did your son do?
A. I don't know.
Q. Did he stay at home?
A. Yes, sir.
Q. Didn't your son leave home that day, too?
A. The boy who put him across the river never went anywhere, only he carried him across the river.
Q. Didn't he come back and go to Muscogee or somewhere?
A. I don't think he did.
Q. Do you know he didn't?
A. No, sir; I don't know that; I don't 'now that he did.
Q. Did your son put him across the river before breakfast?
A. No, sir; after breakfast.
Q. Did he get breakfast at your house?
A. Yes, sir.
Q. There was no particular hurry about his going off that day, was there?
A. He didn't appear to be in a particular hurry.
Q. Do you know why he didn't take breakfast before he came to your house at Mrs. Harris' house?
A. No, sir; I don't know that either.
Q. Now then, the fact is he didn't do it; he come to your house and got breakfast, didn't he?
A. He come to my house just as I was setting down to breakfast?
Q. What time did you eat breakfast?
A. I generally eat breakfast half an hour by Sun.
Q. Did you ever see him any more until he was arrested?
A. No, sir; I never saw him any more until the other day I saw him here.
368 Q. When he left your house he said he was going to a party?
A. Yes, sir; he said he was going over there towards Garfield, in that settlement, to a party.
Q. Did anybody else in that settlement go to that party?
A. Not that I know of.
Q. You didn't hear of anybody else going to that party from your settlement, did you?
A. No, sir; I didn't.
Q. Where were you on the 3rd day of November?
A. I was out on a visit at a nephew of mine, out there in the settlement.
Q. Where were your folks?
A. The little boys, some of them was with me, and some of them was running around the settlement just as common.
Q. Did you have anybody at home?
A. No, sir; not while I was gone—not that I know of.
Q. He took this horse and put it into the lot at the house where there was no one that afternoon?
A. Yes, sir.
Q. Wasn't anybody there to see him do it?

A. Not that I know of; I wasn't at home; I don't know who was there.
Q. Did you ever learn of any of your folks being there?
A. No, sir; I never learned whether there was anybody there or not.
Q. That is all you know about this case, isn't it?
A. That is all I think about.
Q. Have you ever talked to the defendant about it since?
A. No, sir.
Q. He is your stepson?
A. Yes, sir.
Q. Did you ever come to see him after he got in jail here?
369 A. No, sir; I have been trying to get in since I have been down here, and they would never let me in.

Redirect examination:

Mr. WOLFENBERGER. Have I not written to you to come down here and do something for the boy; send me money so I could make an investigation in the boy's behalf, and send me money so I could come up there and make an investigation about it?
A. Yes, sir; you wrote me twice.
Col. CLAYTON. I do not doubt that, especially as to money.
The WITNESS. He only wrote me once in regard to money.
Q. He has written to you to send money; have you done either?
A. No, sir; I hain't; the reason I didn't come, or send money, I didn't have it.

Defense rests.

Which evidence was all that was offered by the defendant at this time.

370 The Government thereupon offered in rebuttal the testimony of the following witnesses, who were respectively called and examined, to wit: Joe Harris, Geo. W. Williams, J. C. Dykes, James Lowry (recalled), Annie Colquitt, Susan Morgan, R. B. Ramsey, Geo. W. Williams (recalled), William Burt (recalled), Richard M. Colquitt (recalled), Robert Morgan (recalled), Charley Vann.

The following is a copy in full of the testimony of the above-named witnesses:

371 *Testimony offered in rebuttal by the Government.*

JOE HARRIS.

Col. CLAYTON. Do you know this defendant?
A. Yes, sir.
Q. What relation of yours is he?
A. Me and his grandmother are cousins.
Q. I will ask you if you remember the Sunday that Sam Morgan was missing from your country, the third day of November?
A. I do, by it being church day.
Q. What church was that?
A. That was at the White Church; there was meeting at church that day.
Q. I will ask you if upon that day you saw this defendant there near your field?

A. No, sir; I don't remember seeing him.

Q. I will ask you whether anything of this kind occur'ed between you and him on that day, whether you saw the defendant there near your field—your field is near the church ain't it?

A. Yes, sir.

Q. And that he was by himself, and that he said to you that he was waiting for Morgan and Keyes and another man who had gone after some whiskey?

A. I don't remember it.

Q. Did anything of that kind occur?

A. I don't remember; if anything of that kind occur'ed I don't remember.

Q. Do you remember of any such circumstance as that ever occur'ing?

A. No, sir.

Q. You never saw him there under these circumstances?

A. No, sir; I don't remember.

372 Q. You ought to remember whether it occurred or not; y'u are a man of sense and intelligence enough to answer it.

The COURT. If it did occur, answer it that way; if it didn't occur, answer it that way.

Col. CLAYTON. Did you under any circumstances see him at your field on Sunday last fall, under these circumstances?

A. I do not think so.

Q. How is it that you remember there was church at that White Church on that Sunday?

A. By the new preacher; that was his first day he preached there.

Cross-examination:

Mr. WOLFENBERGER. Where did you say you were on that Sunday?

A. I was down at Mr. McDaniels, in the bottom.

Q. You were not at church at all?

A. No, sir.

Q. How do you know there was any church there?

A. My wife tells me so.

Q. You needn't say anything about what your wife says. You swear there was church held there that day, and the reason you know it was that the circuit rider come there, made his first round that day?

A. Yes, sir; my wife told me and my sister-in-law——

Q. You needn't say anything about that. You don't know whether you met the boy or not; you don't know, do you?

A. I don't remember of meeting him.

Q. You might have saw him?

A. Of course I might; I don't remember meeting him.

Q. You don't know whether you met him or not?

A. No, sir; I don't remember of meeting him; I might have

373 met him, but then I don't remember of meeting him; I might have met him, but then I don't remember it; that is such a long time ago.

Redirect examination:

Col. CLAYTON. How far is your field from the Brushy Mountain road. The church, as I understand, is on one side of the road, and your field is

on the other. The Brushy Mountain road runs from Hoyt's to Brushy Mountain?

A. My field is on the road from the ferry to Muscogee.

Q. That is the Muscogee road?

A. Yes, sir.

Q. How far is it from the Brushy Mountain road?

A. I don't know which one you speak of; there is one new road and one old road.

Q. The one on the side of the field next to the church?

A. It must be 600 yards; about a quarter of a mile, I will say.

Q. How far is the church from the Brushy Mountain road?

A. It runs about 200 or 300 yards.

GEO. W. WILLIAMS.

Col. CLAYTON. State your name.

A. G. W. Williams.

Q Where do you live?

A. 9 miles east of Musoc'gee on the Arkansas River.

Q. How far do you live from Black Hoyt's?

A. It is about a mile and a quarter.

Q. What direction?

A. It is northwest.

374 Q. How far do you live from Jim Lowry's place?

A. It is about three-quarters of a mile.

Q. In what direction?

A. It is northeast from where he lives.

Q. On the same road?

A. No, sir. (Witness indicates on map where he lives.)

Q. Now then, I will ask you if you know where the body, supposed to be that of Sam Morgan, was found?

A. Yes, sir.

Q. Were you present after he was found?

A. Yes, sir; I went up there that morning.

Q. Who took the body up?

A. I helped to pull him out; Mr. Dykes was down in the hole; I went out to hunt a grapevine; I thought that would be sufficient to draw him out with; I got the grapevine and come on back, and had him put it around under his arms, and me and another man, I don't remember who, some of the other boys, pulled him out with the grapevine; he raised his feet up below.

Q. At the time you pulled him out, please state if you saw his hat?

A. Yes, sir.

Q. Where was it?

A. On the back part of his head like, and it fell off when we lifted him up.

Q. Would you know the hat if you would see it?

A. Yes, sir; that is the hat (pointing to hat held by Col. Clayton); I guess it is. I can tell better by looking at it [here witness examines the hat closely]; yes, sir; that is the hat.

Q. Was that bullet hole in it when you found it?

A. Yes, sir.

Q. How was it on his head?

A. It was sort of back this way [indicating].

375 Q. Was the bullet hole in the front part or the rear part?

A. I couldn't tell you about that; it fell off of his head when we lifted him up; it was kind of rumpled up under his head.

Q. Can you tell what size bullet made that hole?

A. No, sir; I couldn't tell; about a 44 calibre, I suppose; I couldn't tell.

Q. That hat then was on his head in the hole?

A. Yes, sir; stuck back on the back part of his head, and when we were raising him up the hat dropped back.

Q. Did you notice anything about the head or any part of the body to indicate where the man had been wounded, if wounded at all?

A. No, sir; not any further than where the ball went through the skull, right here.

Q. You observed that, did you?

A. The skull was broken off; you can see in the edge of the skull where the ball went in; it went in right here, near the middle of the forehead on the right hand side, right between the eye and the right end of the forehead.

Q. What was the condition of the rest of the head and forehead?

A. This side here was all bursted out, and this part here was all open.

Q. Did you notice the jawbone?

A. Yes, sir; we found the jawbone, what was left of it.

Q. What was the condition of it?

A. It was broken off right here about the crack of the left jaw.

Q. You could see the impression of the ball in the skull?

A. Yes, sir; just about half the impression of the ball here in the skull; all this portion was busted off; and this part here was off, and here [indicating on person].

376 Q. Did you help to examine his pockets?

A. Yes, sir.

Q. Do you know whether the hip pocket was examined?

A. Yes, sir.

Q. Who examined that?

A. We examined it amongst us.

Q. Was there any money on the person?

A. No, sir; we could not feel anything in his pocket; nothing hard; we didn't cut the pocket off; we cut the other pockets across this way.

Q. You couldn't feel anything in them?

A. No, sir.

Q. Do you remember what day it was you took up the body?

A. Yes, sir.

Q. What day was it?

A. It was on the 3rd of November on Sunday—no, that wasn't the day he was found; he was found on Tuesday, in November.

Q. In November? Are you not mistaken about that? How far from Christmas was it when you found the body; you are getting the two dates confused?

A. It was on the 3rd of November we found it.

Q. Was it not on the third of November he was missing?

A. Oh, yes; on the third of November he went away, on Sunday.

Q. Now when was it you found the body; when did you take it up?

A. The day or so before Christmas; he was found on Sunday before Christmas; it was Tuesday before Christmas when we taken him up; I got it sort of mixed; I tried to tell it right.

Cross-examination:

Mr. WOLFENBERGER. What day does Christmas come on?

A. The 25th of December, every year.

377 Q. How do you know that?

A. I only get it from the almanac.

Q. How many Christmas days have you saw?

A. I guess I have seen about 44.

Q. Are you certain of that?

A. I think I have seen them; I might have been asleep.

Q. You are about as certain of that as you are that it was the third of November that the body was taken up?

A. I made a mistake on that; I just got it a little mixed.

Q. Were you up there at all where he was taken up?

A. Yes, sir; I was.

Q. What day did you go there?

A. I went there on Tuesday.

Q. Who was with you?

A. A man named Garington.

Q. You and him went there alone, did you?

A. Yes, sir.

Q. Nobody there?

A. There was several there when we got there.

Q. Did you get down in the hole there?

A. I got down in the hole after the man was taken up.

Q. What did you do that for?

A. I was down in there looking for anything I could find.

Q. Money included?

A. Yes, sir.

Q. Did you have your hands in the man's pockets?

A. No, sir.

Q. How did you examine his pockets? How did you examine his hip pocket?

A. We hit on there with a stick, and there was two keys in one pocket; they rattled like they might be a few pieces of money in there.

Q. How did you get the keys out?

A. Cut the pocket right across that way [indicating].

Q. That was the hip pocket?

A. No, sir; this pocket here.

378 Q. I am talking about the hip pocket.

A. We didn't cut that at all.

Q. How did you examine it?

A. We felt on there with our hands; we could not feel anything.

Q. Was his clothing pretty well worn out?

A. No, sir; his clothing wasn't worn very bad, they were eaten by the rats.

Q. How do you know the rats eaten it?
A. They was eat out this way [indicating].
Q. How do you know the rats ate it?
A. I suppose they did; something did it.
Q. Do you swear rats did it?
A. No, sir.
Q. You say that you examined his pockets?
A. Yes, sir; I did.
Q. Did you examine his hip pockets?
A. Yes, sir; we examined them.
Q. How?
A. We first hit on the pocket with a little stick.
Q. If there was any paper in there could you make it rattle?
A. No, sir; I didn't knock on the back pocket with a stick.
Q. How did you examine that?
A. I felt on there; I could not feel anything.
Q. You didn't put your hands in his pocket at all?
A. No, sir.
Q. You say you just felt of his hip pocket in that way, rubbed it that way?
A. I pinched it with my fingers, rubbed on it with my hand; it felt smooth on the outside.
Q. Pinch your pockets and see if you can tell whether there is anything in them or not?
A. I know there is nothing in mine. [Laughter.]
Q. Did you not take out a ten-dollar bill and a five-dollar bill,
379 and a ten-dollar bill and a five-dollar bill out of that pocket?
A. No, sir.
Q. The man's body was swelling a great deal, was it not?
A. Yes, sir; it was swelling some.
Q. Was it not swelling a good deal?
A. It was swelled enough to tighten the clothing on him; he had swelled until his clothing fit him pretty neatly.
Q. You say you pinched the pocket here; why didn't you cut that pocket?
A. Because I didn't think it was necessary.
Q. You thought it was necessary to cut the other pocket?
A. We thought there was something in them, maybe, and we cut them.
Q. You say there was a man put a grapevine on him and then you pulled him out; who was that man?
A. I don't know but what it was Mr. Dykes that was down in the hole.
Q. How long had he been down there?
A. He got down there when I went after the grapevine.
Q. Had there anybody else been down in the hole?
A. I went down in it after we got the man out.
Q. Had there been anybody else down in there before this man went down in it?
A. I couldn't tell you whether they had or not.
Q. What day of the week was it you went up there?
A. On Tuesday.
Q. When was the body found?

A. On the Sunday before.
Q. What did you do Monday?
A. I went to Muscogee.
Q. What did you go to Muscogee for?
A. I went out there on some business and found out they found the man the day before.
Q. You don't know he was found on Sunday?
380 A. I was told he was.
Q. You don't know whether he was found on Sunday or not?
A. No, sir
Q. What did you tell this jury you knew for? We don't care anything about that.
A. They said they found him on Sunday.
Q. You are not to tell that. You don't know whether he was found on Monday or Tuesday; or Monday or Sunday, I mean?
A. No, sir; I don't know anything about it, only what the parties said.
Q. Now, if there had been a greenback bill in the man's pocket, and been damp, and been lying down there a long while—his flesh was swelling on his body, making his clothing tight—could you have discovered it by doing like you did do?
A. No, sir; if it had been straightened out in there I couldn't tell it.
Q. Now, you don't know whether there was any money in there?
A. No, sir; I don't know whether there was or, but I don't believe there was.
Q. You know, though, that pocket wasn't searched?
A. No, sir; it wasn't torn wrongside out or cut open.

J. C. DYKES.

Col. CLAYTON. What is your name?
A. J. C. Dykes.
Q. Where do you live?
A. In the Cherokee Nation.
Q. Were you present when the body of the man said to be Sam Morgan was taken out of the hole in Jim Lowry's field?
A. Yes, sir.
Q. Do you remember what day that was?
381 A. It was the 24th day of December.
Q. The day before Christmas?
A. Yes, sir.
Q. Did you help take it out?
A. Yes, sir.
Q. Where was the body lying; in what position?
A. It was in a hole.
Q. You went down in the hole, I believe?
A. Yes, sir.
Q. What position was the body in the hole?
A. His legs was kind of drawn up in this position, and leaned kind of in that shape [indicating].
Q. In the bottom of the hole?
A. Yes, sir.

Q. Was there anything over him when you got there, or had they taken him up?

A. There was some chunks and leaves and one stuff and another.

Q. Did you take that off?

A. Yes, sir; I raked that off.

Q. Did you notice his hat?

A. I didn't notice his hat until after I had helped taken him out; somebody else got the hat out.

Q. You saw it after it was taken out?

A. Yes, sir.

Q. Is that the hat?

A. Yes, sir; it looks something like the hat.

Q. Look at that bullet hole in front. Were you present when his pockets were examined?

A. Yes, sir.

Q. Any money on his person?

A. None, sir; none at all that I seen.

Q. Did you see a watch on him?

A. Yes, sir.

Q. Who took the watch off of him?

A. I took the watch.

Q. Look at this watch [handing witness a watch, which he examines].

A. That looks something like the watch.

Q. Would you take that to be the watch?

382 A. Yes, sir; I believe I would take that to be the same watch.

Cross-examination:

Mr. WOLFENBERGER. What is your name?

A. J. C. Dykes.

Q. Where do you live?

A. In the Cherokee Nation.

Q. How long have you been living there?

A. I come there in September sometime.

Q. Last September?

A. Yes, sir.

Q. Where had you been living before that time?

A. I had been living at Springfield, Missouri.

Q. What did you go down th're for?

A. I come down th're to farm.

Q. Is it good farming country in Missouri?

A. Yes, sir; tolerable.

Q. How far did you live from where the body was found?

A. Well, sir, I suppose about a mile and a half, I think it was, as well as I could tell, straight across, I guess about a mile and a half.

Q. When did you first hear the body was found?

A. It was the evening before, I think; I think it was on the 23d; no, I think it was that morning; it was taken up in the evening.

Q. How far did you live from there?

A. A mile and a half, I think, as near as I can tell.

Q. Who brought you the word?

A. I don't know; I couldn't say positive; I don't remember who it was first told me.

Q. Are you acquainted with the deceased Sam Morgan?

A. No, sir; I wasn't very well acquainted with him; I had seen
383 him a few times; the last time I ever saw him was in April before that; last April was a year ago.

Q. You went up there on the 24th to where the body was in the hole?

A. Yes, sir.

Q. Did you get in the hole?

A. Yes, sir.

Q. Could you see anything of any signs of anybody being there pushing around with sticks?

A. No, sir; when I got there I reckon there was a dozen men standing there.

Q. I ain't asking you that question; I asked you if when you got there there was any signs of anybody being down in the hole?

A. No, sir; not that I could tell.

Q. If there had been you could have noticed it?

A. Yes, sir.

Q. Where was the hat at the time you got down there?

A. I could not tell you; after we raised him out and I got out of the hole, some one in scratching around in there, some one, I don't know who it was, got the hat; it must have been covered up in the leaves.

Q. Then if his hat was on his head back that way you didn't see it?

A. No, sir.

Q. You would have saw it?

A. Yes, sir; I think I would; I think it must have been off to one side.

Q. Are you certain this is the hat?

A. I wouldn't be positive; it looks like it something.

Q. Would you swear that is a bullet hole?

A. No, sir; I couldn't do that.

Q. You didn't examine the pockets until you got up on the bank, did you?

A. No, sir.

Q. What did you find in the pockets?

A. They found some papers, and got a kind of a day book.

Q. Did you find anything else?

384 There was a couple of knives, or a knife, and a handle, I think, and maybe a key or two; I am not certain; there was a key of some kind, I don't recollect what kind it was now; I never paid much attention to it.

Q. Did you examine all the pockets?

A. I believe I did, or about all of them.

Q. Well, did you?

A. All, unless it was one inside pocket.

Q. Did you examine the pocket in the hip?

A. Yes, sir.

Q. Put your hand in it?

A. I didn't put my hand in it, but I taken a stick and turned the pocket wrong side out.

Q. There was nothing in it?

A. There was a kind of a kid glove, looked like, pretty well worn.

Q. Then if a man would say that he was rubbing his hand over the hip pocket there, and he never felt anything in it, would he be telling the truth? He could not do that without feeling something in the pocket, could he?

A. Yes, sir; it looks like he could.

Q. You found no money in the pocket?

A. No, sir; none at all.

Q. You don't know who that was there, that body, do you?

A. No, sir; I don't.

Q. Was the body decomposed much? Was the body destroyed, or how was it, was there much gone?

A. No, sir; not much gone, only his face was tore all off.

Q. Was his jaws gone?

A. Yes, sir; entirely gone from alone here, kind of this way.

Q. The back of the head was all sound?

A. Yes, sir; as far as I could tell.

Q. Did you examine his head?

A. Yes, sir; this part here and here was gone (indicating). We
385 found his jaw bone in the hole and put it in the coffin with him.

Q. Did you find anything else?

A. No, sir; that is all we found—that is, all I noticed.

Q. Did you find any of his forehead lost there?

A. I didn't see any of his forehead at all.

Q. If that had been there you would have saw it?

A. Yes, sir; I guess I would; I guess I saw all that was there.

Q. There wasn't a forehead, and a half bullet hole right in that forehead, and that part of it still there, and the balance of it gone?

A. No, sir; I think not.

Q. If there had been anything of that kind you would have saw it?

A. I think so.

Redirect examination:

Col. CLAYTON. Did you see any place on the head where there had been a bullet hole, or half of a bullet hole?

A. Yes, sir; it looked to be something up here (indicating).

Q. You put it up there?

A. Yes, sir.

Q. You say you turned the pocket wrong side out?

A. Yes, sir.

Q. That hip pocket; there was no money in it?

A. No, sir.

Recross-examination.

Mr. WOLFENBERGER. How large was the hole where you got down in there where the body was?

A. It was some 4 feet across.

Q. How deep was it?

A. Something about like 5 feet deep, I guess.

386 JAMES LOWRY—Recalled.

Col. CLAYTON. You have been on the stand before and stated that you saw the defendant and Sam Morgan pass by the Harnegie place?

A. Yes, sir.

Q. Do you know William Burt, who has been upon the stand?
A. Yes, sir.
Q. Did you see him on that day?
A. Yes, sir.
Q. Where did you see him?
A. I saw him at Colquitt's.
Mr. WOLFENBERGER. When was that?
Col. CLAYTON. On the third day of November, the day that Morgan was missing. (To witness.) At Colquitt's?
A. Yes, sir.
Q. What time in the day did you see him there?
A. About half an hour before sundown.
Q. How come you to see him there then?
A. I stopped in there.
Q. That was about half an hour before sundown; what was he doing?
A. Wasn't doing anything only sitting there on the porch in a chair.
Q. Anybody with him?
A. Yes, sir; there was several there.
Q. Who was there?
A. A fellow they called Ramsey.
Q. What is Ramsey's given name?
A. I don't know; and Bob Morgan was there.
Q. Who else? Was Mrs. Colquitt there?
A. Yes, sir; she was there.
Q. Any other ladies that you know of?
A. Bob Morgan's wife was there.
Q. That was about half an hour before sundown?
387 A. Yes, sir.
Q. How long did you stay there?
A. I staid there about 2 or 3 hours.
Q. When did you leave?
A. I left after dark.
Q. Where was Burt then?
A. He was there at the house.
Q. He was there all during that time?
A. Yes, sir.
Q. You staid two or three hours; that would bring you home after night.
A. Yes, sir.
Q. You left there after night?
A. Yes, sir.
Q. Burt was there all the time you were there?
A. Yes, sir.
Q. You found him there?
A. Yes, sir.
Q. Then is it true that between sundown and dark that Hurst or anybody else saw him in a buggy about a mile, or two miles, on the other side of where this killing occurred going towards Muscogee, not very far from Watson's place?
A. No, sir; not that evening, because he was there all the time.

Q. You were there half an hour before sundown and remained a good while after dark; he was there all that time?

A. Yes, sir.

Q. Do you know anything about whether any money had been paid to Morgan prior to his death?

A. Yes, sir; I saw Frog Hoyt pay him ten dollars Friday before he left.

Q. Who is Frog Hoyt? Is he here?

A. No, sir; he is not here.

Q. This man Morgan he paid ten dollars to?

A. Yes, sir.

Cross-examination:

Mr. WOLFENBERGER. When did you first find out that Mr. Burt was setting up there at Mr. Colquitt's on Sunday?

A. About half an hour before sundown.

388 Q. What sundown?

A. Third day of November.

Q. You didn't tell us anything about that when you were here before; why didn't you tell it before?

A. You didn't ask me.

Q. You knew it?

A. Yes, sir.

Col. CLAYTON. It wasn't in issue then?

Mr. WOLFENBERGER. I put it in issue.

Col. CLAYTON. I do not think you did.

Mr. WOLFENBERGER (to witness). You say it was about half an hour by sun?

A. Yes, sir.

Q. Where had you been?

A. I had been to Harnegie's place, and from there I went to Black Hoyt's.

Q. When did you go down there?

A. I went Sunday morning.

Q. Where did you stay all day?

A. I staid part of the day at Harnegie's.

Q. What part of the day did you stay at Harnegie's?

A. I staid there until along towards 12 o'clock.

Q. Where did you go to then?

A. I went to Black Hoyt's.

Q. How long did you stay there?

A. I don't know; two or three hours.

Q. Where did you go then?

A. Down in the bottom to a fellow named Gales.

Q. How far was that?

A. About a mile and a half.

Q. How long did you stay there?

A. I don't know; I don't remember.

Q. About when was it when you left Mr. Hoyt's?

A. Sometime after 12 o'clock; I staid there two or three hours.

Q. About 2 o'clock then?

A. Yes, sir.

389 Q. How far is it to Mr. Gales'.

A. About a mile and a half.

Q. What did you go down there for?

A. Just riding around; didn't go for anything particular.

Q. Did you get down?

A. Yes, sir.

Q. Hitch your horse?

A. No, sir; I stood there and held my horse; there was several standing at the fence; I got down and stood where they were.

Q. You staid there a couple of hours?

A. I don't know just how long.

Q. Well, about how long did you stay there?

A. I couldn't tell you, because I don't remember.

Q. Well, then where did you go to?

A. Went from there back to Colquitt's.

Q. Did you stop anywhere?

A. No, sir.

Q. Did you meet anybody?

A. No, sir—yes; I seen Dick Styles and he went on over there with me.

Q. Was he horseback?

A. He was just getting on his horse to go over there.

Q. He went back up to Mr. Colquitt's?

A. Yes, sir.

Q. Who did you say you found when you got there?

A. I found Ramsey and Mr. Morgan and Mrs. Morgan and Colquitt and his wife; there was more there, I don't remember who they were.

Q. That is all you found you recollect now?

A. Well, Burt was there too.

Q. Where was Charley Keye at that time?

A. I don't know him.

Q. He lives up there just above you on the river three-quarters of a mile.

Q. (By Col. CLAYTON.) Do you know William Keyes?

390 A. Keyes staid up there.

Q. (By Mr. WOLFENBERGER). Did you not state to me you didn't know a man named Keye up there?

A. I don't know a man named Keye; his name is Keyes; I know a man named Keyes.

Q. You knew who I was talking about. You know where Mrs. Bible lived?

A. Yes, sir.

Q. You told me you didn't know anything about where she lived when you were here before.

Col. CLAYTON (to witness). Did you state that?

A. No, sir.

Mr. WOLFENBERGER (to witness). Do you know where a man named Rider lives up there?

A. Yes, sir.

Q. You knew where Keyes lived when you were talking to me awhile ago, didn't you?

A. I knew he staid there sometimes.

Q. Why didn't you tell me so?

A. Didn't I tell you. You asked me where Keye was; I told you I didn't know.

Q. I asked you if he wasn't a witness here, and you said no.

A. I told you Keye wasn't a witness here.

Q. When did this man Burt come into your settlement there?

A. I think about the last of October.

Q. What was he doing in there?

A. He was picking cotton after that time.

Q. When did you first see him?

A. I don't remember just what day it was.

Q. If you would hear that he come in there on Friday night before this man left the country, would that be true—just came in there from Arkansas?

A. I could not say.

391 Q. You say he come in there about the first of October?

A. I said the last of October.

Q. What time in October?

A. I don't know.

Q. He had been picking cotton around there, hadn't he, long before that?

A. I never had seen him.

Q. When was he picking cotton?

A. After that.

Q. Who paid him to pick cotton?

A. I don't know.

Q. What was he doing around there; where was he when you first saw him?

A. At Bob Morgan's.

Q. He wasn't at Colquitt's the first time you saw him?

A. No, sir.

Q. Please tell us what day that was?

A. I don't know.

Q. About what time; you have some idea; was it before the fair, or after the fair at Muscogee?

A. After the fair.

Q. Did he not have quite a little bit of whiskey around there, peddling it around there, at that time?

A. I didn't know it; I never seen any.

Q. Did you ever hear of his peddling whiskey there?

A. No, sir; I never.

Q. Were you drinking any that day?

A. No, sir.

Q. You don't know where this man was from sunup on Sunday until sundown, do you?

A. No, sir; only just when I seen him about half an hour before sundown, is the first time I saw him that day.

Q. Did you stop there at Colquitt's that day?

A. Yes, sir; about half an hour before sundown.
Q. Was you there before?
A. No, sir.
Q. Were you down there at Mr. Vann's at the time they had the game down there?
A. Yes, sir.
392 Q. Did you have a hand with them?
A. No, sir.
Q. Was Colquitt down there then?
A. I didn't see him.
Q. Was this man Burt down there?
A. I didn't see him.
Q. Was Morgan down there?
A. I don't remember of seeing him.
Q. Did you see Morgan any time that day?
A. I seen him that evening.
Q. Where was he?
A. He was at Colquitt's.
Q. If he had come down there to Van's you would have seen him?
A. I never seen him.
Q. Did he come there?
A. I don't know.
Q. If he had come there you would have seen him?
A. I didn't see everybody that come.
Q. How far is Mrs. Vann's from Colquitt's?
A. About 300 yards.
Q. Would he have to pass right along the road there if he went down to Black Hoyt's down by Colquitt's?
A. No, sir; he wouldn't have to.
Q. You were on the road all the time?
A. No, sir; I wasn't on the road.
Q. How far is the house from the road?
A. It was right close there, but I wasn't on the road.
Q. Where was you?
A. I was in that lot part of the time.
Q. You were in the house part of the time, too, I reckon?
A. No, sir; I never went in the house.
Q. What were you doing around there so long?
A. They was playing cards and I was standing there.
Q. You had a jug of whiskey around there and had a general hoe-down?
A. No, sir; I never seen any whiskey there.
393 Q. This is the only explanation you can give us; when I asked you where Keyes lives you said you didn't know, and said you didn't know where Mrs. Bible lived.

Redirect examination:

Mr. CLAYTON. You told him that Keyes lived up there?
A. Yes, sir.
Q. And where Mrs. Bible lived?
A. Yes, sir.

Q. It has been charged here two or three times that Mr. Burt was selling whiskey up there; is that true?

A. I never have heard of him selling it.

Q. If he was selling whiskey there you would have probably known it, would you not?

A. I have never heard anything of it; it looks like I would have heard about it.

(Jury takes a recess.)

ANNIE COLQUITT.

Col. CLAYTON. You are the wife of Monroe Colquitt that is here?

A. Yes, sir.

Q. Do you know Mr. William Burt?

A. Yes, sir.

Q. Do you remember the time that Mr. Sam Morgan was missing from your country up there?

A. Yes, sir.

Q. You were living at that time with your husband, I suppose?

A. Yes, sir.

Q. Do you remember the day that Mr. Sam Morgan was missing?

A. Yes, sir.

394 Q. When was it?

A. The third day of November.

Q. That was the first Sunday in November?

A. Yes, sir.

Q. Please state if you saw Burt on that day, and, if so, where you saw him.

A. He was at my house all the day.

Q. When did he come to your house?

A. Saturday morning.

Q. Staid there all day Sunday?

A. Yes, sir; he was there at our house all day Sunday.

Q. Where did he stay Sunday night?

A. At our house.

Q. Not away?

A. No, sir.

Q. In the afternoon, if you remember, please state who was at your house.

A. Mr. Morgan and his wife—Bob Morgan, I mean—Will Burt, Mr. Ramsey, and Mr. Lowry.

Q. What time did Mr. Lowry come to your house, do you know?

A. No, sir; I don't remember just now what time it was. It was in the evening, though.

Q. You say that Burt was there, and he was there all day?

A. Yes, sir.

Q. Did he go away from your house that day, do you know?

A. No, sir.

Q. Did he take dinner at your house?

A. Yes, sir.

Q. Did he eat supper there?

A. Yes, sir; he came the'e the night before.

Q. Did you ever hear of Burt's being a whiskey peddler, selling whiskey in that country?

A. No, sir.

Q. When did you come here?

A. Yesterday evening.

395 Cross-examination:

Mr. WOLFENBERGER. What time did you leave home?

A. I live up here by Muscogee; I left there the 15th day of April.

Q. What time did you start down here to court?

A. Yesterday about eleven o'clock.

Q. Who told you to come down here?

A. My husband.

Q. Was he down here at that time?

A. No, sir.

Q. Where was he?

A. He come to me yesterday evening——

Q. I understand that.

Col. CLAYTON. (To witness.) He had a subpœna for you, did he not?

Mr. WOLFENBERGER. (To witness.) Did he show you the subpœna? He come there and read the subpœna to you, did he?

A. Yes, sir.

Q. Give you a piece of paper, did he not?

A. He didn't give me any paper.

Q. Did he tell you what to say when you come down here?

A. No, sir.

Q. Did he talk to you about what he wanted you to say; he told you what to say when you come down here?

A. Yes, sir.

Q. What did he tell you to say?

A. Didn't tell me what he wanted me to say, but what he wanted me to come here for.

Q. Did he not tell you what he wanted you to tell?

A. No, sir; he didn't tell me what to say.

Q. What did he say to you?

A. He said they wanted me here.

Q. We want to know what he told you they wanted you here for.

(Witness pauses.)

Q. You can answer that question, can you not? I will ask you

396 this question—something easier than that. You say you left up there about eleven o'clock yesterday.

A. Yes, sir.

Q. Where did you go to then, when you left home; did you go to Bragg's station to get on the train?

A. I was at my father's.

Q. Where did you go to from there?

A. Come to Ft. Smith yesterday.

Q. Did you come on the train?

A. No, sir.

Q. How did you get here?

A. Come in a buggy.
Q. Who brought you?
A. My husband, Mr. Colquitt.
Q. What time did you say Mr. Morgan come up there, or did he come there at all? When was he at your house last?
A. I can not answer it; I don't remember the last time he was there; he was there a good many times.
Q. You say you started from home yesterday about 11 o'clock?
A. From my father's.
Q. Who taken you to your father's?
A. I was there on a visit.
Q. Who came after you?
A. My husband.
Q. Then you didn't see Mr. Morgan at all?
A. No, sir; I did not see him yesterday at all.
Q. When did you see him? You didn't see him after you come to Ft. Smith, did you?
A. No, sir.
Q. You say that your husband came up there; what day did he come up there?
A. He come yesterday morning.
Q. Much hurry when he come?
A. He didn't seem to be in a very big hurry.
Q. Where did you say you were on the 3rd of last November?
A. I was living on Charley Vann's place.
Q. How far was that from Mr. Vann's house; about how far?
A. About half a mile from his mother's.
397 Q. Who did you say it was that served the paper on you, the subpœna?
A. Mr. Will Burt did, yesterday evening.
Q. Where at?
A. At the hotel.
Q. Here in this town?
A. Yes, sir.
Q. Mr. Will Burt?
A. Yes, sir.
Q. Where does Mr. Will Burt live; do you know?
A. No, sir; I don't know.
Q. When did he first come to your house?
A. He come to our house on the second day of November.
Q. That was on Saturday?
A. Yes, sir.
Q. Was that the first time you ever saw him?
A. No, sir; I have seen him lots of times.
Q. Where?
A. Here at my home in Franklin County.
Q. You knew him in Arkansas before you moved to the Territory?
A. Yes, sir.
Q. When did you first see him in the Territory?
A. The second day of November.
Q. That was the first time you saw him after he left Arkansas?

A. Yes, sir.

Q. He came straight over from Arkansas; he told you that he came from home?

A. He staid all night at Bob Morgan's; he came to his house on Fripay night and staid there all night.

Q. He came from Arkansas?

A. Yes, sir.

Q. On that Sunday you was talking about, what time did Morgan come to your house?

A. I think about 10 o'clock.

Q. Do you know the defendant?

A. Yes, sir.; I have seen him.

Q. Did you know Mr. Sam Morgan?

A. Yes, sir.

Q. Did you see him on that day?

A. No, sir.

398 Q. Where was you?

A. I was in the house.

Q. All day?

A. No, sir; I wasn't in the house all day.

Q. You were in the house, though?

A. Yes, sir.

Q. Did you see these parties pass along there?

A. No, sir; I was in the house at that time.

Q. How do you know?

A. Well, I heard some of the men folks say they seen them pass by.

Q. At that time, or since that time?

A. Since that time.

Q. You never heard anything about them passing until after this jangle got up about who killed the man; you never heard anything said about it before that, did you? Until after it come out Morgan was killed?

A. Yes, sir; I heard them say they saw them pass by there; heard them that day.

Q. Who said that?

A. I couldn't tell you; some of the men folk at my house.

Q. Where were they at?

A. At our house.

Q. Out of doors, or setting in the house?

A. Setting on the porch.

Q. Who was setting on the porch; who was there at the time you heard them say they saw them pass along there?

A. There was my husband and Will Burt and Bob Morgan.

Q. Morgan's wife there, too?

A. Yes, sir.

Q. Where was his wife?

A. In the house. The men folks said when they come in the house that they seen them pass by.

Q. Going on Bob Morgan's horses?

A. They wasn't Bob Morgan's.

Q. Whose was they?

A. They were Sam's horses.

Q. Did they say they were going on Sam Morgan's horses?
A. Yes, sir.
399 Q. Who else was there at your house at the time they passed there?
A. If there was anyone else there I don't remember it.
Q. What time did Mr. Bob Morgan leave your house that day, if he left at all?
A. It wasn't very long before sundown.
Q. Did he come back that night?
A. No, sir.
Q. Didn't come back and stay all night with you?
A. No, sir; he went home.
Q. Who staid all night with you that night?
A. Will Burt.
Q. Anybody else?
A. No, sir.
Q. He came there Saturday morning and staid there until Monday morning.
A. Yes, sir.
Q. Where did he go Monday morning?
A. Started off to his work.
Q. Where was his work at?
A. He was picking cotton there.
Q. Who for; Black Hoyt, wasn't he?
A. He was picking on Black Hoyt's place.
Q. How long had he been picking?
A. Just started to work that morning.
Q. Did you see Jim Lowry there that evening?
A. Yes, sir.
Q. What time?
A. I don't remember what time he came, but he was there after sundown, right smart while afterwards.
Q. Right smart while after dark, then?
A. Yes, sir.
Q. What kind of horses were they that went up passed your house?
A. I never seen them.
Q. Did you ever see the horses?
A. Yes, sir; I have seen them lots of times.
Q. You knew they were Sam Morgan's horses?
A. Yes, sir.
Q. Do you know anything about Mr. Morgan having a difficulty
400 up there with his brother a day or two before, or two or three days?
Do you know what they had the difficulty about?
A. There was a trouble between them.
Q. What was the trouble between them?
A. There was a trouble between Mr. Sam Morgan and Mr. Bob Morgan; it was something about their horses, I think.
Q. Which horse was it, the gray horse or spotted horse?
A. The gray horse.
Q. That was Mr. Sam Morgan's horse?
A. Yes, sir.
Q. Do you know what they had the difficulty about?

A. I think it was something about him riding him too hard.
Q. For riding the horse?
A. Yes, sir.
Q. Do you know whether Mr. Morgan had a pistol when he went down there that day?
A. No, sir.
Q. Did Morgan ever tell you he had, Bob Morgan?
A. No, sir.
Q. What did he tell you about it?
A. He didn't tell me nothing.
Q. He didn't tell you anything about it?
A. No, sir.
Q. How did you learn about it.
Col. CLAYTON. I object to that. It is not competent. (To witness). Were you present at the time of the difficulty about the horse?
A. No, sir.
Mr. WOLFENBERGER. (To witness.) How do you know they had a difficulty.
(Objected to.)
The COURT. If she wasn't present she could not know anything about it, legally speaking.
Q. You say he came to your house on Saturday morning on the second day of November; your are certain of that?
A. Yes, sir.
401 Q. How do you recollect that?
A. I recollect it; I knew the day of the month.
Q. Did you have any dates put down, anything that you remember this particular date by, anything that way, only your mind?
A. No, sir; I just remember the date, the day of the month.
Q. You never thought anything about it?
A. No, sir.
Q. You didn't charge your memory what day he came there at all. He just come up there from Arkansas and went to picking cotton; that is all you know about it, ain't it?
A. Yes, sir.
Q. Did he stay all night at your house on Sunday night?
A. Yes, sir; on Saturday night and Sunday night.
Q. Did he have any whiskey when he came there?
A. If he did I didn't see any.
Q. If he had had any you would have seen it, would you not?
A. Yes, sir; I never seen any whiskey. I never seen any whiskey there.
Q. Did you see any whiskey while he was up there; did you see him with any?
A. No, sir.
Q. What time did he leave that country up there?
A. It was in January I think.
Q. How long after this man was missing before he left up there?
A. I don't remember how long it was.
Q. Did he ever go back up there after he came down here to Fort Smith?

A. Yes, sir; he come back once from Ft. Smith up there.
Q. What time was that?
A. He came down here after a warrant and got the warrant and came back up there; that was the first of January he came to Ft. Smith,
402 and he came back and staid, it was the first, sometime about the first of February, he had to go back again; he has not been back up there since; I think it was the third day of February he had to come down here.
Q. If it had been the third day of January, that would have been the day he was coming down here, wouldn't it? I don't want to confuse you. If you think it was the third day of February, let it go that way.
A. I don't know exactly the day he come down here.
Q. Do you remember when this defendant was brought down here; do you remember the circumstance?
A. Yes, sir.
Q. Did you ever see this man Burt up there after that time?
A. Yes, sir.
Q. Are you certain of that?
A. Yes, sir.
Q. How long did he stay up there?
A. He left about the first of February, when he had to come back down here again.
Q. After you learned there was an indictment found against him, did he ever come back up there, or did you ever learn they had found a bill against this man here and had him down here in jail?
A. Yes, sir.
Q. After that was done, after January or February, did Mr. Burt ever come back up there any more?
A. He never come back up——
Q. When did you first see him after that, after he left?
A. It has been about two weeks ago, I think.
Q. Where did you see him?
A. At his aunt's.
Q. Where is that?
A. Here in Franklin County.
Q. Then he wasn't in Texas—Blue Ridge, Texas—about 2 weeks ago, was he?
A. I don't know, sir.
Q. You know you saw him down there in Franklin County?
403 A. I don't know whether it has been 2 weeks or not; I think last Friday was a week ago, or 2 weeks ago.
Q. Which was it?
A. I don't remember; I think it was 2 weeks ago last Friday.
Q. How long had you been down there?
A. Ever since the 15th of April.
Q. When did he first come there?
A. I think last Friday was two weeks ago that he come.
Q. Where did he tell you he came from? Where did he tell you he had been?
A. He didn't tell me.
Q. Did he tell you he had been at Ft. Smith?

A. Yes*m*, *sur*.
Q. Last Friday was two weeks ago?
A. Yes, sir.
Q. Are you any connection to Burt?
A. Yes, sir.
Q. What connection are you?
A. Cousin by marriage.
Q. Do you know whether your husband is any connection to Sam Morgan or not?
A. Yes, sir; they are cousins.
Q. Were they raised out in the old country together—that is, in Georgia?
A. No, sir; I think my husband was about 2 years old when his mother and father moved away from there.

404 MAY 31, 1890—4.00 p. m.

SUSAN MORGAN.

Col. CLAYTON. You are the wife of Robert Morgan?
A. Yes, sir.
Q. Did you know Sam Morgan in his lifetime?
A. Yes, sir.
Q. He was your brother-in-law?
A. Yes, sir.
Q. Do you know the day he was missing from that country?
A. Yes, sir; the 3rd day of November.
Q. On Sunday?
A. Yes, sir.
Q. Where were you that day?
A. At Colquet's.
Q. What time did you go there?
A. About 10 o'clock in the morning.
Q. Who went with you?
A. My husband.
Q. Did you see Will Burt there that day?
A. Yes, sir.
Q. Did he go there after you got there?
A. He was there when I went; he was there all day.
Q. How long did you stay?
A. Until about ½ hour by sun.
Q. Was Jim Lowry there that day?
A. Yes, sir.
Q. Did he come before you left?
A. Yes, sir.
Q. To Colquet's?
A. Yes, sir.
Q. When you left there ½ hour by sun state where Burt was then?
A. Right there.
Q. You left him there?
A. Yes, sir.

Q. Did you eat dinner there?
A. Yes, sir.
Q. Did Burt eat dinner there?
A. Yes, sir.
405 Q. About what time did you eat dinner?
A. About 12 o'clock.

Cross-examination:

Mr. WOLFENBERGER. How long had you been acquainted with Sam Morgan?
A. Since the 27th of last January a year ago.
Q. Did he stay about your house a good deal?
A. Yes, sir.
Q. Pretty much all the time?
A. Yes, sir.
Q. When did he leave your house?
A. I am not certain.
Q. Do you remember what day of the week he left your house?
A. He left my house on Monday.
Q. Do you know what made him leave your house?
A. He just didn't want to stay no longer.
Q. You and he got quietly along together?
A. Yes, sir; we never had a short word.
Q. He always treated you right and you treated him the same way?
A. Yes, sir; just as well as I could ask of him.
Q. Do you know if your husband and he had any trouble?
A. If they did I never heard of it.
Q. Did you ever hear of them having any trouble at all?
A. Nothing only what my husband told me. I don't know the words was spoken?
Q. About that time Sam Morgan left your house?
A. Yes, sir.
Q. Do you know where he went to?
A. To Mrs. Harris'.
Q. Do you know what the trouble was about?
A. About a horse.
Q. Had your husband sold a horse to Sam Morgan?
A. No, sir; Sam had bought the horse and we had paid our money on it, and if he didn't pay for it then the horse was to be turned over to us.
Q. When was he to pay for it?
A. He didn't say when he was to pay for him; just when he got his money out of his cotton.
Q. Had he got his money out of his cotton?
406 A. Part of it; not all of it.
Q. Did Sam take the horse with him when he left your house?
A. Yes, sir.
Q. Where did he take the horse to?
A. I suppose to Mrs. Harris'?
Q. What made Bob go and take the horse?
A. He ought to pay for the horse or leave him there.
Q. You stated you were at Colquet's on the 3rd day of November last?
A. Yes, sir.

Q. What were you doing up there?
A. Just went up there to spend the day.
Q. Just on a visit?
A. Yes, sir.
Q. Who went with you?
A. My husband.
Q. Who was there when you got there?
A. Mr. Burt.
Q. Anybody else?
A. And Mr. Colquet and his wife.
Q. That was all?
A. Yes, sir.
Q. Did you take dinner there?
A. Yes, sir.
Q. What time did the defendant and Mr. Morgan pass on the horse?
A. Between 10 or 11.
Q. Did you see them?
A. No, sir.
Q. How do you know they passed?
A. I heard Mr. Burt and my husband and Mr. Colquet say so; that is all I know.
Q. What time of day did you say that was?
A. Between 10 and 11.
Q. Did they have a clock there?
A. Yes, sir.
Q. You looked at the clock and saw what time it was?
(No answer.)
Q. How long did you stay there before you left that evening?
A. Until about ½ hour by sun.
407 Q. You and your husband then went home?
A. Yes, sir; and left Burt there.
Q. Was Colquet there at that time?
A. Yes, sir.
Q. His wife there, too?
A. Yes, sir.
Q. Anybody else?
A. Mr. Lowry and Mr. Ramsey.
Q. What time did Lowry come there?
A. Very near night.
Q. How long had he been there before you left?
A. ½ hour, or perhaps longer.
Q. You left about an ½ hour by sun?
A. Yes, sir.
Q. You don't know where Burt staid after that *that* night?
A. He staid there that night, they told me.
Q. I asked you if you knew where he staid?
A. I don't know only just what they told me, I left him there.
Q. Did your husband stay there all day that day?
A. Yes, sir.
Q. Do you know whe. Burt came to the settlement there?

A. Yes, sir; the first day of November, on Friday evening; he came to my house on Friday evening and staid all night and went to Colquet's Saturday morning.

Q. When was Sam Morgan at your home last?

A. On Saturday evening; he just passed by; he was looking for Burt.

Q. Do you know where Burt came from?

A. From Arkansas; from home.

R. B. RAMSEY.

Col. CLAYTON. Where do you live?

A. Near Muskogee.

Q. How far do you live from Harnage's?

A. About ½ mile; I did live at Harnage's last year.

Q. Did you live there in November last?

A. Yes, sir.

Q. You knew Sam Morgan?

A. Yes, sir.

408 Q. Do you remember the day he was missing in that country, supposed to be killed?

A. Well, the last time I saw him was on the 3rd of November, on Sunday morning.

Q. Where were you?

A. At Harnage's.

Q. You saw him pass by?

A. Yes, sir; he stopped there awhile.

Q. Anybody with him?

A. Mr. Crumpton was with him.

Q. About what time was that?

A. I don't know; it was in the forenoon though.

Q. Do you know William Burt?

A. Yes, sir.

Q. Did you see him that day?

A. Yes, sir.

Q. Where?

A. Over at Colquet's, about a ½ mile from Harnage's.

Q. What time did you go to Colquet's?

A. It was in the afternoon some time.

Q. About what time?

A. I don't remember; it was along in the evening.

Q. Before sundown?

A. Yes, sir; when I went there it was before sundown a good while, as well as I remember; it was an hour or two by the sun.

Q. Who did you find there when you got there?

A. Mr. Colquet and his wife and Bob Morgan and his wife were there, and Will Burt was there, and Mr. Lowry—I forgot whether he was there when I got there or not, but he was there when I was there part of the time; I believe he came after I got there.

Q. How long did you stay?

A. As well as I remember it was about sundown when I left.

Q. Where was Burt then?

A. At Mr. Colquet's
Q. You left him there?
A. Yes, sir.
Q. Certain of that, are you?
A. Yes, sir.

Q. When you went there you found Burt there and you left
409 before sundown, and you left him there?

A. Yes, sir.
Q. Where was Bob Morgan?
A. He left Colquet's just before I did, him and his wife; his wife was riding and I forgot whether he was or not.
Q. And you left before sundown?
A. Yes, sir.
Q. Do you know whether Burt is a whiskey peddler or not?
A. I never heard of it.
Q. Did you ever hear of him selling whiskey up there?
A. No, sir.

Cross-examination:

Mr. WOLFENBERGER. You live near Muskogee?
A. Yes, sir.
Q. How long have you been living in that neighborhood?
A. 2 or 3 years.
Q. What were you doing up there?
A. Farming.
Q. Are you a citizen up there?
A. No, sir.
Q. Have you a farm up there?
A. No, sir.
Q. Are you married or single?
A. Married.
Q. You have a place that you work on?
A. I am a renter.
Q. Whose farm were you living on?
A. Hoyt's.
Q. How far was that from Muskogee?
A. About 8 miles.
Q. How long have you been living right in that settlement?
A. Only last year, but I have been living in the neighborhood around Muskogee for 2 or 3 years.
Q. What time did you move to Hoyt's place?
A. Last year.
Q. When did you move to Harnage's?
A. Last March a year ago.
Q. You made a crop there last year at Harnage's?
A. Yes, sir.
Q. Where were you on the 3rd of last November?
A. There at Harnage's.
Q. What doing there?
A. Living there.
Q. Anybody there on that day?

A. Yes, sir.

410 Q. Who?

A. I don't remember—a good many. There was Mr. Lowry and Mr. Harnage and Charley Vann and Mr. Robinson.

Q. How long did you stay there that day?

A. I staid there until the afternoon.

Q. Taken dinner there, I suppose; you lived there?

A. Yes, sir.

Q. Did anybody take dinner with you?

A. I don't remember only the home folks.

Q. Did you chop up any wood that day?

A. I don't remember.

Q. To make a fire to get dinner with?

A. I don't remember.

Q. Did you have a horse working that day?

A. I didn't work him that day.

Q. Did you water your horse that day?

A. He was outside.

Q. Tell us something else you done on that day.

A. I went over to Colquet's in the afternoon.

Q. How do you know you did?

A. I remember.

Q. How do you know it was on the 3rd of November?

A. Because I know.

Q. Tell me how you know it.

A. Because I remember it; that day was on Sunday.

Q. Did you have a memoranda book and put it down?

A. No, sir.

Q. Was it in 1890?

A. 1889.

Q. When did you next see the defendant?

A. It was that night at Hoyt's, about dark, as well as I remember.

Q. How far were you living from Hoyt's?

A. About 2 or 300 yards.

Q. Name all the persons there at Harnage's that day.

A. I told you a few minutes ago all I could remember; Mr. Harnage, Mr. Robinson, and Mr. Lowry, Charley Vann, Mr. Crumpton, and Mr. Morgan.

Q. When did you first see Mr. Burt?

411 A. I don't remember; it was last fall some time; as well as I remember, it was in October.

Q. What time in October?

A. I don't remember.

Q. Had he been picking cotton up there?

A. Yes, sir; in the neighborhood.

Q. In October?

A. Yes, sir.

Q. Where was he picking cotton the first time you saw him picking it?

A. In Sam Morgan's cotton field.

Q. You think that was in October some time?

A. As well as I remember, it was.
Q. Do you know where he was Friday, Saturday before Morgan disappeared?
A. I don't know; if I saw him, I don't remember it.
Q. Were you at the fair at Muskogee?
A. Yes, sir.
Q. Did you see him up there?
A. I don't remember.
Q. You said you never heard of him having whiskey up there?
A. No, sir; I never did.
Q. Did you ever see him drinking?
A. I have saw the man take a drink, as well as I remember.
Q. When was that; whose whiskey was he drinking?
A. I don't know; there was a crowd of boys.
Q. You seen them pass it around?
A. Yes, sir.
Q. You can't tell me whose whiskey he was drinking?
A. No, sir.
Q. You remember, though, seeing him drink whiskey?
A. Yes, sir.
Q. At what place?
A. It was on Hoyt's farm or near the farm in the road.
Q. Who was present when he was drinking?
A. I don't remember all that were there.
Q. Tell me some of them.
A. Mr. Colquet and Mr. Curb or some such name and I was there.
412 Q. What kind of whiskey was it, good or bad?
A. I guess it is all good and better; I don't think it was very bad.
Q. You never have anything bad up there?
A. I don't generally have very much of it.
Q. You know good whiskey from bad when you take it?
A. Well, we don't strike any that is bad; it is all good—good and better.
Col. CLAYTON. This whiskey you saw him drinking, it wasn't on the Sunday you saw him there?
A. No, sir.

G. W. WILLIAMS.

Col. CLAYTON. Do you remember the day that Sam Morgan was missing?
A. Yes, sir.
Q. Did you see him that day?
A. Yes, sir.
Q. Who, Sam Morgan?
A. No, sir.
Q. I will ask you if you saw Mr. Burt that day?
A. Yes, sir.
Q. Where?
A. At Colquit's.

Q. Were you over there?
A. Yes, sir.
Q. What time did you go there?
A. I got there when they were eating dinner, I suppose about 12 o'clock; I remained there until between 4 and 5.
Q. Was he there when you got there?
A. Yes, sir.
Q. Did he remain there all the time you were there?
A. Yes, sir.
Q. Did you ever know or hear of his peddling whiskey up in that country?
A. No, sir; I never seen the man before that day in my life.

Cross-examination:

Mr. WOLFENBERGER. You are well acquainted with him?
A. No, sir.
413 Q. How many times did you ever see him?
A. Never, until that day.
Q. How many times did you ever see him?
A. I told you I never saw him until that day.
Q. That ain't answering the question.
A. He was in my company all the time after I got there except while we were eating our dinners.
Q. Where was he eating dinner?
A. Sitting out on the porch, I reckon; I could not see him.
Q. You got there about dinner?
A. I got there when they were eating dinner.
Q. Who was at the table?
A. Mrs. Colquet and Bob Morgan's wife and Mr. Burt was eating dinner.
Q. You say you were with him all the time only when eating dinner. Where was he then?
A. He was at the dinner table.
Q. I thought you staid with him all the time only at dinner; what do you mean by that?
A. I told you they were eating dinner when I got there, and I thought I was with him all the time only when he was eating dinner.
Q. Where was he when you eat dinner?
A. At the dinner table when I got there, and he remained there until I got through eating.
Q. How long did he stay at the dinner table?
A. I couldn't tell you; I had no watch.
Q. Did they not have a clock on the wall?
A. I don't think they did—they might. I never was there before that day.
Q. You were in the house?
A. I went into the door and stepped into the room to dinner.
Q. Where did you go after dinner?
414 A. I went out and sat on the porch in front of the house; we all sat there.
Q. How long did you stay there?

A. Until about half after 4 o'clock, when I went home; they didn't have but two or three chairs and——

Q. You sat on the porch from dinner until about ½ hour by sun?

A. Until about ½ after 4 o'clock; I suppose it was that; by the time I got home it just lacked a few minutes of 5 o'clock.

Q. You have got a clock at home then?

A. Yes, sir.

Q. Where did you go to when you got home?

A. I got off my horse and went on to the house and looked at the clock and got the paper and sat down and went to reading.

Q. What kind of a paper were you reading?

A. The "Missouri Republican;" just looking over it.

Q. What was the news in the paper?

A. It is a hard matter to tell you; I wasn't much of a reader; I can't tell you the general information of the paper at all.

Q. Can you read at all—did you ever go through the old spelling book?

A. No, sir; I never went to school but 6 days in my life.

Q. Can you write your name?

A. No, sir.

Q. If I give you a book could you read it?

A. I expect I could spell along and make out what it was like.

Q. Can you spell your name?

A. I expect, probably, I could.

Q. Spell it?

A. I sign my name George Williams.

Q. Spell it?

A. G-e-o-r-g-e W-i-l-l-i-a-m-s. It will do for a man that don't know anything.

Q. You can't tell anything in the newspaper though?

A. Well, I don't know it is necessary in this case.

415 Q. I want to test your memory?

A. I was just looking over it to see if there was anything of importance.

Q. How far is it from Colquet's to where you live?

A. About ¾ mile.

Q. Were you walking or riding?

A. Horseback.

Q. Are you living on the main road?

A. No, sir.

Q. Did you have any fences to lay down?

A. No, sir.

Q. Between your house and Colquet's?

A. No, sir; I went over by where Dykes lives, and I hollered and no one come out, and I went on down the field and I hollered there; I thought maybe they might be in the field, and I couldn't see any one, and I rode up to the house slow and stopped at the pond; I went to the gate where I live and watered the horse there.

Q. You started over to Colquet's house and hollered?

A. Dykes' house.

Q. How long did you stay there?

A. Just a few minutes; I suppose 3 or 4 or 5 minutes.

Q. Where did you go to then?

A. Then to the field gate and hollered there, and I didn't see anyone, and I just rode up and stopped at the pond and watered my horse, and went on to the house.

Q. How long do you think you staid down there?

A. About 2 minutes, I guess.

Q. Who were you hollering for?

A. For the folks.

Q. You went from there up to the pond?

A. Yes, sir.

Q. How long did you stay at the pond?

A. Just long enough for the horse to drink.

Q. How far was the pond from your house?

A. I guess about 300 yards, or 250.

Q. Then you got home and got down off the horse and pulled
416 your saddle off?

A. Yes, sir; and I put the saddle inside of the gate and turned the horse in the lot; the lot was about 150 yards from the house.

Q. Did you feed him?

A. No, sir; not right then, there was some hay in the manger and corn in the trough; there was feed enough in there for him.

Q. Then you went back to the house?

A. Yes, sir.

Q. Then you hung your saddle up?

A. Yes, sir; took it in the shade and hung it up.

Q. Then you went in the house?

A. Yes, sir.

Q. Going in the house you looked at the clock and it lacked 5 minutes of 5 o'clock?

A. It might have lacked a few seconds of it.

Q. Then what did you do then?

A. I picked up the "Republican" and was looking over it a little.

Q. Did you get on the porch?

A. No, sir; I sat down in the house right in the door by the big end of the bedstead.

Q. How long do you think it took you? You stopped and called them sometime; you staid there 5 minutes, you think; you then went down to the big gate and staid there?

A. About 9 minutes outside of what it took me to ride the distance that I was detained on the road. I live right at the end of the road.

Q. You did not meet anybody on the road?

A. No, sir.

Q. When were you subpœnaed down here?

A. Friday morning about 10 minutes to 10 o'clock by the time I had there.

Q. The same old clock? Why did you look?

A. Mr. West told me to come right away, and I wanted to see if I had time enough to get the train or not. I wanted to know what time it was.

Q. What circumstance was it that directed you to look at the
417 clock that evening and know that it lacked 4 or 5 seconds of 5 o'clock?

A. I am in the habit of it when I go in the house when I am away to see what time it is when I get back generally, and I most always look; *and I most always look* when I go away what time it is; I generally pay particular attention to what I do before I do anything; sometimes I make some mistakes though like other men do.

Q. You never dreamed of any trouble up there at that time?

A. No, sir.

Q. There is nothing in the world that attracted your attention to the clock, and it just lacked 4 or 5 seconds of 5 o'clock?

A. Yes, sir; I am in the habit of doing that way and I can't help it.

Q. When was your attention first called to the clock since that time?

A. I never thought any more about it until I was asked about it.

Q. Then there was nothing special attracted your attention to it at that time?

A. No, sir.

WILLIAM BURT—Recalled.

Col. CLAYTON. Do you remember being brought in here the day before yesterday to confront a man by the name of Hurst?

A. Yes, sir.

Q. Do you know him?

A. No, sir.

Q. I will ask you if on the day Sam Morgan was missing, on the 3rd of November, you saw him?

A. No, sir.

Q. Please state if you were in a buggy with Sam Morgan on that day.

A. No, sir; I was not.

Q. And saw him at Watson's place when Sam Morgan intro-
418 duced you to him?

A. No, sir.

Q. Where were you on that day?

A. At Colquet's.

Q. I think you stated on the stand that you did not remember whether you staid all night or not. Do you now remember whether you staid all night or not?

A. Yes, sir; after I have had a few moments thought to reflect, I remember staying at Colquet's that night. I remember Mr. Lowry staying there, and staying until after dark.

Q. It is not true then that you were in a buggy that day at all?

A. No, sir; it is not.

Q. Or with Sam Morgan?

A. No, sir; I didn't speak to him.

Cross-examination:

Mr. WOLFENBERGER. Where did you say you were raised?

A. At Charleston, Franklin County.

Q. What time did you leave down there?

Col. CLAYTON. I object to that. He has gone over the same evidence. I brought him in to prove one point.

Mr. WOLFENBERGER. It seems to me I have a right to contradict him. He said he came up there on Friday before the 3rd of November——

The COURT. You can examine him on that point.

Mr. WOLFENBERGER. What time did you leave down there?

A. I left Tuesday or Wednesday.

Q. What time did you get to the Indian country?

A. On Friday evening.

Q. Where did you stop?

A. At Morgan's.

Q. Nobody sent for you to come up there?

A. No, sir.

Q. I believe you stated you went up there to pick cotton?

A. Yes, sir.

419 Q. I believe you stated you did not have any money?

A. No, sir; I had money at home, but I didn't want to take it.

Q. You got up there on the Friday before?

A. Yes, sir.

Q. And you staid all night where?

A. At Morgan's.

Q. Where did you go next day?

A. I went to Colquet's and from there to Mrs. Harris'; I went down there to see Mr. Morgan, my cousin.

Q. What time did you get over to Colquet's?

A. I went over there Saturday morning.

Q. Did you stay there all day?

A. Not quite all day; I had dinner there and staid that night. I went down to Mrs. Harris'.

Q. Did you come back up and eat dinner there?

A. Yes, sir.

Q. Did anybody come there that evening to Colquet's?

A. Yes, sir.

Q. Who?

A. Sam Morgan?

Q. What did he want?

A. To see me.

Q. Didn't he want to hire you to pick cotton?

A. Yes, sir.

Q. Then he did not come specially to see you because you came in the country?

A. I suppose he did; I don't know; he told me when we were talking he had some cotton to pick and he would just as soon hire me as anybody, and I hired to him. Next morning Mrs. Colquet fixed dinner for me and I went to the field, and they told me Sam Morgan had gone, and I set my dinner down on the fence.

Q. You said you went back next day?

A. I didn't mean that.

Q. You mean to say you went back on Monday. You skipped Sunday?

A. Yes, sir; I meant the next working day.

Q. You got there on Friday night and saw Mr. Morgan on Saturday. Where did you see him?

A. At Colquet's.

Q. Did he take you down there?

A. No, sir.

Q. He didn't leave you down there, then?

420 A. No, sir; I went with him down to Black Hoyt's about ¼ of a mile, or a little over.

Q. What time was it when you left there?

A. Nearly dark.

Q. How long did you stay at Hoyt's?

A. We didn't stay down there long; about a ½ hour by sun when we got up there; I went down the field with him then and talked.

Q. What time was it you went to Muskogee?

A. Monday morning.

Q. What did you go to Muskogee for?

A. I went up with the boys.

Q. What for?

A. I don't know what for; I just went along; I had no business. Mr. Colquet had sold Mr. Sam Morgan his horse and he left the country and he wanted to run an attachment on it.

Q. How do you know he left the country?

A. Well, I don't know it; I just supposed he did; well, he was gone.

Q. You did not know where he went?

A. No, sir.

Q. That was Monday?

A. Yes, sir.

Q. You are certain of that, now?

A. Yes, sir.

Q. Were you ever at Muskogee before?

A. No, sir.

Q. You were not there at the fair?

A. No, sir.

Q. You were connected with Sam and well acquainted with him?

A. Yes, sir.

Q. You saw him in Arkansas?

A. Yes, sir.

Q. He heard you were in the country and he came to give you a job of work?

A. Well, I don't know whether he did or not; he didn't know whether I wanted work.

Q. Didn't you state you hired to him?

A. Yes, sir.

Q. Did you go to work?

A. No, sir; I started.

Q. Why did you not go on?

A. Because I told you I went to Muskogee.

421 Q. Why did you not pick the man's cotton out?

A. Because he left the country.

Q. How do you know he left the country?

A. I didn't know that he left, but he was gone somewhere.

Q. Now, you say you went to work and took your dinner down there and left it out there?

A. Yes, sir; a day or two.

Q. Where was your dinner left several days?

A. At Mrs. Vann's; I said a day or two.

Q. Who took your dinner to Mrs. Vann's?

A. I did.

Q. Why did you leave it at Mrs. Vann's; where was Robert Morgan at that time?

A. At home. When I got to Mrs. Vann's Mr. Ramsey told me about him being gone.

Q. Had you seen Robert Morgan at that time?

A. I don't think I had; I didn't see him; not at that time.

Q. Why did you not go back to the cotton; you had not seen Robert Morgan at that time who wanted you to go to Muskogee?

A. Mr. Colquet was there.

Q. I suppose he went?

A. He was there and he said he wanted me to go, and some one went after Morgan and Morgan came back and we all went together to Muskogee.

Q. Colquet went with you to Muskogee.

A. No, sir; I don't think he went with us.

Q. You went over there to go to work?

A. Yes, sir.

Q. And you went to Mrs. Vann's and left your dinner there until Colquet came; then you had a conversation, then Morgan was sent for, and you all got on your horses and went to Muskogee?

A. Yes, sir.

Q. Now, what did they want you to go to Muskogee for?

A. On Saturday evening Morgan told me he had given Colquet
422 a note, and Colquet said he went to Morgan and tried to get him to give another note or a mortgage and he wouldn't do it, and it made Sam a little mad, and Sam told me if he didn't keep quiet he would beat him out of his horse if he could.

Q. If Sam Morgan had gone down there and given his note well secured then there wasn't any necessity for it. He wasn't trying to beat him out of the horse. Who told you that?

A. Sam Morgan told me the evening before if he didn't keep quiet and not cut up he would beat him out of it if he could.

Q. If who didn't keep quiet?

A. Mr. Colquet.

Q. You told Colquet that, did you?

A. Yes, sir.

Q. What did Colquet say to that?

A. He didn't say anything; he said he would keep quiet, he believed he would pay him. He owed him $115.

Q. You say you went over there that morning and Colquet was there, and Morgan came there and they wanted you to go and make an affidavit. Why would they want you to go up there and get out an attachment?

A. That is all I know, if that is anything.

Q. Did you make a statement?

A. Yes, sir.

Q. Do you know what Morgan said was the grounds for the attachment?

A. No, sir.

Q. Did you swear anything about it?

A. No, sir.
Q. Who examined you up there?
A. No one.
Q. You did not make a statement to the agent at all, did you?
A. Yes, sir.
Q. Didn't you just tell me a moment ago——
A. I thought you meant I was sworn. I made a statement to the agent.
Q. What did Morgan say when he got down there about it?
A. I don't know what he said; he said they would go and get out
423 an attachment; he had left the country and they didn't know why.
Q. Had you heard he left the country until you went there that day?
A. No, sir; not until I got down there, Mr. Ramsey told me about it.
Q. You were ready to go to work and left your dinner there and Morgan was sent for and you all went to Muskogee?
A. Yes, sir.
Q. Who were you talking to when you came up there about the property, about what Sam Morgan said to you; when did you tell Colquet about it?
A. The night before.
Q. And he didn't think he would try to beat him out of his debt?
A. No, sir.
Q. He had it secured, didn't he?
A. No, sir.
Q. Wasn't the note given to Black Hoyt?
A. No, sir; that was Bob Morgan; Colquet had no connection with that?
Q. Was anybody on Colquet's note for the money?
A. He told me there wasn't.
Q. You don't know anything only what he told you?
A. That is all.
Q. When you went to Muskogee I believe you stated that there was nobody asked you what Sam Morgan told you about the note, but you stated to Colquet the night before what Sam Morgan had told you about beating him out of the note?
A. He didn't say he would do it; he said if he didn't keep quiet and quit cutting up; I think he said that.
Q. You did not tell anybody at Muskogee about that; you stated to Mr. Clayton that you did not know where you staid all night Sunday *m*ight the 3rd of November, 1889?
A. No, sir; I didn't say that.
Q. You didn't?
424 A. I don't think I did; I told you I staid there at Colquet's or Morgan's one.
Q. Didn't you state you did not know where you staid all night?
A. No, sir; I don't think I said that.
Q. Did you know?
A. I didn't right at that moment.
Q. When did you first remember?

A. I remember now, because I was there after dark; I remember being there all the evening, and I remember Williams and Ramsey being there, and Bob Morgan and his wife staid there until near night, and the next day Mr. Colquet's wife fixed dinner and I started to the field.

Q. What was he to give you?

A. 6 bits a hundred.

Q. Did he pay you anything?

A. Why should he?

Q. Did he?

A. Why should he—no, sir; he didn't.

Q. You say you were not away from the house on the 3rd day of November, 1889, until late in the evening. Where did you go late in the evening?

A. I don't think I said I went anywhere.

Q. Did you stay there all day?

A. I think I staid there all day and all night.

Q. When did you first recollect that?

A. After I left the stand; after I had time to think; I couldn't remember just at the spur of the moment.

Q. Who told you where you staid all that night?

A. Nobody.

Q. Why did you send for these witnesses to come down and testify you staid there?

A. I know they knew where I staid; that is, Colquet's wife did and Mr. Colquet, but the others I didn't know, because they were not there, and Jim Lowry, I knew he would know.

Q. What time did Lowry leave?

A. After dark a right smart while.

Q. What time did he come that day?

425 A. He came there a ½ hour by sun; maybe a little earlier in the evening.

Q. You got there on Friday and staid there all day. Were you ever in the bottom that day at any time on Sunday?

A. No. sir.

Q. Never away from the house?

A. No, sir.

Q. Did you have any whiskey up there in that country?

A. Yes, sir.

Q. Did you take any whiskey up there when you went up in that country?

A. No, sir.

Q. How much whiskey did you have up there?

A. I taken Mr. Colquet's wife and Morgan's wife a ½ pint apiece.

Q. Did you ever cross down there and go on the other side of the river and get whiskey and bring it back in the country there?

A. No, sir.

Q. Did you meet Mr. Brewer just on the bank of the river and you got lost and he piloted you to a graveyard and you paid him in whiskey for piloting you?

A. Yes, sir.

Q. What did you have with you?

A. That whiskey I was telling you about.
Q. Where did you get it?
A. At Fort Smith, here.
Q. What time was that?
A. I don't know; about December, maybe.
Q. You went over one day and came back the same day?
A. Yes, sir; I went home though; I didn't go to Fort Smith after whiskey; I went home and they requested me to bring them that whiskey.
Q. You came back the same evening and got lost that night?
A. Yes, sir; I left my horse at Bragg Station, and when the train came back the next evening it was late, and by the time I got to the bottom it was dark.
Q. Did you have any keg or anything in the satchel coming back?
A. No, sir; whoever swears that swears a lie. I have heard
426 that some one was going to swear it. I don't know whether they have or not.
Q. Anybody swears that swears a lie?
A. Yes, sir.
Q. If anybody would say you had whiskey up there only what you have spoken of would swear a lie?
A. Yes, sir.
Q. If anybody was to say you got there before Friday would swear a lie also?
A. Yes, sir.
Q. Those two pints was all the whiskey you ever had in that country?
A. Yes, sir.

RICHARD M. COLQUET—Recalled.

Col. CLAYTON. On the day that Sam Morgan was missing, the 3 of November, on Sunday, you say you saw him?
A. Yes, sir.
Q. I want to know if you saw William Burt upon that day?
A. Yes, sir.
Q. Where did you see him?
A. At my house.
Q. Do you remember when he came to your house?
A. He came back there on the Saturday evening before.
Q. How long did he remain at your house?
A. Until Monday; Monday morning.
Q. Was he away from home on Sunday?
A. No, sir.
Q. He staid there all day?
A. Yes, sir.
Q. And staid at your house on Sunday night?
A. Yes, sir.

Cross-examination:

Mr. WOLFENBERGER. You say he came back to your house Saturday evening late?
A. Yes, sir.
Q. Do you know where he had been?

A. He was at my house, and Sam Morgan came over there and he went back with him.

Q. That was in the forenoon, was it?

427 A. No, sir; late Saturday evening.

Q. When did Mr. Burt first come to your house?

A. I don't remember about that; he came there that day some time; I don't remember what time.

Q. Where did you say he staid all night Sunday night when you were on the stand before?

A. I don't think I said he staid anywhere.

Q. Were you asked anything about where he was?

A. I was asked where he was on Sunday. He was at my house on Sunday.

Q. Didn't you answer me a while ago you did not know where he was on Sunday?

A. No, sir; Sunday night.

Q. You say you don't know where he staid on Sunday night, don't you?

A. No, sir.

Q. When you were on the stand the other time?

A. No, sir; I don't think I said anything about that; I don't think I was asked that question.

Q. Were you asked if he staid all day at your house?

A. Yes, sir; I think I was.

Q. Were you asked if Mrs. Morgan was at your house?

A. I think I was.

Q. What time did you say Morgan left your house that day?

A. Late in the evening.

Q. What time did Hoyt send a mule over there? Did Hoyt send a mule over there that day for Mr. Morgan to look at? Did Mr. Morgan leave there that day and go down to Hoyt's to look at a horse or a mule?

A. Mr. Stearns came over there riding a pony and Morgan got on that and rode it off to Vann's.

Q. How long did he stay there?

A. Not very long.

Q. What time did he come to your house that day?

A. In the morning.

428 Q. Was he there when Mr. Crumpton and Sam Morgan passed?

A. I don't remember.

Q. You ought to remember that. What time did Will Burt come into that neighborhood?

A. On Friday before, I believe that is right, but I wont be positive.

Q. Did you know him while he lived there in the State?

A. Yes, sir; we have been principally raised together.

Q. When Morgan came to your house did he hire Mr. Burt? Did you hear the contract for him to pick cotton?

A. No, sir; I don't think I did.

Q. Did Mr. Morgan come to your house to hire him to pick cotton on the Saturday before?

A. I don't know, he came over there on Saturday before that Sunday and carried him off. They didn't stay there but a few minutes.

Q. Do you know whether he hired him to pick cotton after he came or not?

A. Yes, sir; he hired him to pick cotton for him; I don't know he hired him there; I didn't hear any trade made.

Q. When did he go to pick for him?

A. I believe he went over there; I don't remember anything about that.

Q. You know he picked cotton for him?

A. Yes, sir; I know that.

Q. But don't you remember when it was?

A. No, sir; on Monday, I believe.

Q. Where did you go on Monday after it was understood that Morgan had left the country?

A. I went to Muskogee.

Q. Who went with you?

A. Mr. Morgan, and I believe Mr. Burt went along.

Col. CLAYTON. He is going over the same ground.

Mr. WOLFENBERGER. I never heard of him going there before.

429 ROBERT MORGAN—Recalled.

Col. CLAYTON. You said when on the stand——

Mr. WOLFENBERGER. It was understood that this man was not to be used as a witness. Now, sir, to put him on the stand to testify seems to be going a long ways to meet justice.

The COURT. He is a brother of the man who was murdered. (To Col. Clayton.) Go on.

Col. CLAYTON. You stated when on the stand before that you were over at Colquet's on Sunday, and saw your brother and the defendant pass by.

A. Yes, sir.

Q. You said Will Burt was with you?

A. Yes, sir.

Q. And Colquet?

A. Yes, sir.

Q. State how long you remained there.

A. I staid there, I reckon, about ½ hour. As Mr. Colquet said, Stearns came over there riding a wild pony, and he wanted me to ride it, and I rode it over to Vann's before dinner.

Q. I want to know how long you staid there after that?

A. I staid there at Colquet's until late in the evening; the sun was nearly to the mountain.

Q. During that time where was Burt?

A. He was there all the time.

Q. Where did you leave him?

A. At Colquet's, late in the evening.

Q. Did he go away from there while you were there?

A. Not while I was there.

Cross-examination:

Mr. WOLFENBERGER. Where were you sitting at 2 o'clock that day?

A. I think we were sitting out on the porch; we sat there all the afternoon after we eat dinner.

430 Q. How long after noon did you sit there?

A. From the time we eat dinner until the time we went home, late in the evening.

Q. You eat dinner along about 12 o'clock?

A. Yes, sir; I suppose.

Q. And you sat there until the sun was nearly to the mountain; did you see anybody pass early in the morning?

A. I saw Sam Morgan and Bood Crumpton pass. Williams eat dinner there, and Mr. Lowry came there and Mr. Ramsey and some others, I don't remember who else.

Q. What time did you go to Colquet's that day?

A. Sunday morning about 10 o'clock.

Q. What time was it when you rode the wild pony?

A. He rode over there just a few minutes after I got there.

Q. You got on the pony and rode it off?

A. Yes, sir.

Q. To Mrs. Vann's?

A. Yes, sir; I reckon I staid at Mrs. Vann's about an hour.

Q. What time did you get back to Colquet's?

A. They were eating dinner when I got back.

Q. Who was eating dinner there at that time?

A. They were through eating dinner as soon as I come. They called Mr. Wiiliams and I into dinner; they were just at the finish up and the boys walked out as I walked in.

Q. And you and Williams sat down to the table?

A. Yes, sir.

Q. The rest had just walked out of the room?

A. Yes, sir.

Col. CLAYTON. I believe I will introduce these two applications for witnesses.

(The two applications were read to the jury and are hereto attached.)

Col. CLAYTON. I believe I will rest the case.

Gov. closes.

431 This was all the witnesses called by the Government in rebuttal.

The defendant then offered in sur-rebuttal the testimony of the following witnesses, who were respectively called and examined to wit: Christopher Harris (recalled), Black Hoyt (recalled), Geo. W. Williams (recalled), Wilson Rider (recalled), Geo. Williams (recalled).

This was all the evidence offered by the defendant in the case.

The following is a copy in full of the testimony of the above-named witnesses:

432 Col. WOLFENBERGER. I want to show that Burt was in there long before and was in there peddling whiskey a week or two before the witnesses testify to.

The COURT. I don't see its competency, though you may call them.

CHRISTOPHER HARRIS.

Mr. WOLFENBERGER. Do you know when Will Burt came into your country?

A. I couldn't say how long it was.

Q. About how long before the missing of Morgan?

A. It seems like it was 5 or 6 days to me, may be longer.

Q. Do you know whether he had been picking cotton for anybody in that country?

A. No, sir.

Q. Do you know anything about him having whiskey up there?

A. No, sir.

Q. Did you ever hear anybody say he had whiskey up there?

Col. CLAYTON. Never mind.

Mr. WOLFENBERGER. You think he was in there several days before?

A. Yes, sir; to the best of my recollection.

Cross-examination:

Col. CLAYTON. If he came in there on the Friday before, that would have been 3 days, Friday, Saturday, and Sunday. Now, you don't know he was in there before that do you?

A. Well, he was there on Saturday certain hunting for Sam Morgan.

Q. He had not seen Sam up to that time?

A. No, sir; and I told him he went over to the station to redeem his pistol.

Q. Well, Sam had gone to the station to redeem his pistol the day before?

A. Yes, sir.

Q. Now that was on Saturday?

A. Yes, sir.

433 Q. Now Sunday he left. He had been there so little time that he and Sam had not seen each other. On Saturday before? That is correct, ain't it?

A. It seems to me like he was there longer than that.

Q. Well, that don't prove it. What you say proves the other thing. You would not swear that if 5 or 6 witnesses swear he was not. You know he was there on Saturday because he was looking for Sam. That is about all you know about it?

A. Yes, sir; he was there hunting for Sam.

Q. That was Saturday?

A. Yes, sir; but I couldn't say whether the Saturday before or the Saturday week before.

Q. You were under the impression it was Saturday a week before?

A. Yes, sir.

Q. Well, was it Saturday a week before?

A. I couldn't say, it seems to me that way, it seems like he had been there longer to me.

Q. Don't you know it was the Saturday before he left he was over there looking for Sam and that Sam was after his pistol?

A. I don't know it.

Q. How long after the Muskogee fair was it?

A. It was the next week I think; it wasn't very long after.

Q. It wasn't a week after the fair?

A. I don't remember.

Q. When Sam went for his pistol wasn't that the next week after the fair?

A. It must have been, it was right after the fair.

Q. It wasn't a week after the fair was it?

A. I came home on Friday morning the last day of the fair and I don't remember whether he came in that day or when it was.

Q. You know it was not the next day. It was a week after that wasn't it?

A. It might have been, I couldn't say.

Q. What is your best impression since you come to think of it?

434 A. I couldn't say whether it was the Saturday after the fair or next.

Q. Isn't it your best impression it was the next? You said awhile ago it was a week after the fair. That is the reason I am holding you down to it. You let it drop out it was a week after the fair that Sam went over after this pistol. You came home on Friday the last day of the fair?

A. Yes, sir.

Q. Now, it was not the next day, was it, but a week from that day?

A. It must have been; I don't remember seeing him during the fair.

Q. It was the next week?

A. Must have been.

Q. That would make it on the Saturday before the day before he left. The fair closed upon what—25th, 26th, 27th, and the next Sunday was the third.

A. I can't hardly state what it was.

Q. I will ask you if you are not willing to correct your statement you made before, that it was a week after instead of the Saturday?

A. I couldn't be positive about it.

Q. You do know this: That the day that Sam went off across the river to get this pistol that Mr. Burt was there at your house to see him?

A. Yes, sir; that is where Sam claimed he was going.

Mr. WOLFENBERGER. You said before that you were trying to buy the pistol from Morgan sometime during the week and Morgan went off on Sunday?

A. Yes, sir.

Q. You stated you sold him a watch chain?

A. I sold him the watch on Monday before he went off on Sunday.

Q. And you stated he tried to sell you his pistol sometime during that week?

A. Yes, sir.

Q. Then he didn't go after the pistol on Saturday before they went off on Sunday?

A. Yes, he wanted to trade me a pistol.

435 Q. He had the pistol in the fore part of the week before Saturday?

A. Yes, sir.

Q. You don't know whether he had it with him or not—did you see it?

A. Yes, sir, I didn't see it at that time; I didn't take the pistol and look at it; I seed it was a one just like it.

Q. That was on Saturday, the time he went over to get the pistol you saw the pistol on a week day before the Saturday following and he wanted to sell it to you?

A. He wanted to trade the pistol just before he went off.

Q. If that be true this man came there before Saturday before the 3rd of November?

A. I couldn't say which Saturday.

Q. You have stated here, and it is written down, that you saw Mr. Morgan with a pistol—this pistol that he tried to sell it to you—sometime during the week before they left on Sunday. Did you state that?

A. Yes, sir; he tried to sell me the pistol before he went off. He did have a pistol during the fair, that is when he first named it to me was during the fair.

Q. If it had been the Saturday before that time he was down there getting him to pick cotton for him, and he had been in a week before that time had he not?

A. It seemed that long to me.

BLACK HOYT—Recalled.

Mr. WOLFENBERGER. Where do you live?

A. 8 miles east of Muskogee.

Q. Do you know when Mr. Burt came in the settlement there?

A. I don't remember exactly.

Q. What do you think about it?

A. It was about the 20th or 25th of October, somewheres along there.

Q. Did he ever work for you?

A. No, sir.

Cross-examination:

4:36 Col. CLAYTON. Was Mr. Burt there during the fair?

A. I don't remember seeing him during the fair.

Q. Then he must have come there the week after the fair?

A. I don't remember exactly what day he did come; it wasn't far from the fair.

Q. He wasn't there the fair week, was he?

A. I couldn't say positive.

Q. What do you think about it; did you see him there fair week?

A. No; I don't remember that I did.

Q. Did you see him the next week after?

A. Well, I think I did.

Q Well, now, the fair closed on Friday, the 25th, Saturday was the 26th, and Sunday the 27th; now, he didn't come there until the next week; so if he come on the first of November he would come on Friday, the next week after the fair.

A. I don't know; I would think he was there 8 or 10 days before Morgan disappeared.

Q. You see if he wasn't there the fair week it would be impossible for him to have been there as long as you think. You have no way of fixing it in y'ur *k*ind?

A. No; I can't positive say I remember.

Q. You don't remember of his doing any work before Morgan went off?

A. Yes, sir; he picked cotton for Sam Morgan.

Q. What day did he pick cotton for Sam Morgan?

A. I don't remember.
Q. He picked cotton for Bob Morgan on Tuesday, after Sam went off.
A. He picked cotton before he went off, I think.
Q. What day?
A. I couldn't say.
Q. Did he pick cotton on Saturday?

A. I don't remember; I couldn't say; I know he was there and
437 picked cotton, and I know he was there before Sam disappeared a day or two; maybe longer than that; he picked cotton there for Bob and Sam both.

Q. What day was it he picked cotton for Sam?
A. I couldn't say what day; I know he was there in the field a day or two.
Q. He might have picked some after Sam disappeared?
A. I don't know.

Mr. WOLFEMBERGER. I would like to introduce this application I fil'd this morning.

The COURT. Upon what ground?

Mr. WOLFENBERGER. On the grounds the other applications have been on; and this man swears these facts are true, just as he did in the other applications. He states, in the same language, he believes the facts to be true.

The COURT. Suppose the jury got that fact; could they consider a fact of that kind?

Mr. WOLFENBERGER. Yes, sir.

The COURT. They are adverse statements. You can not bind the Government by that statement; the Government did not make that statement.

Mr. WOLFENBERGER. We close.

438 *Testimony offered in rebuttal by the defense.*

MONDAY MORNING, *June 2nd*, 1890.—8.30 o'clock.

GEORGE WILLIAMS.—Recalled.

Mr. WOLFENBERGER. I believe you were on the stand Saturday evening?
A. Yes, sir.
Q. I want to ask you if you know Mr. Wilson Rider?
A. Yes, sir; when I seen him; I don't know much about him.
Q. I want to ask you if you had him summoned down here?
A. Yes, sir.
Q. I want you to state what he said to you?
Col. CLAYTON. Never mind.

Here Mr. Wolfenberger stated what he expected to prove in connection with this witness, but it appeared that he had not laid any foundation, and for the present the witness was excused.

439 WILSON RIDER.—Recalled by the defense.

Mr. WOLFENBERGER. Your name is Wilson Rider?
A. Yes, sir.
Q. You were on the stand here last week?

A. Yes, sir.

Q. Did you have a conversation with Mr. George Williams about what you saw when you saw Crumpton before you was summoned to come down here; about where you was?

A. No, sir; he was asking about it?

Q. Did you have a conversation with him about it, I asked you? Did you talk with him about it?

A. No, sir; he asked me this he says: Did you meet up with Bood along the road somewhere and have a talk with him, and I told him I never did have any talk with him, that what I told George Williams.

Q. When you had the conversation with him there didn't you tell him that you met Bood Crumpton this defendant here on the outside of the fence out in the timber, and you said you came along there and spoke to him and he passed on by you?

A. I never did tell anybody that he is the man that was asking me about it.

Q. Didn't you say you were on the outside of the fence yourself?

A. No, sir.

Redirect-examination:

Mr. CLAYTON. Mr. Williams came to you and asked you if you had seen this man. You told him you had; did not talk to him?

A. Yes, sir; I told him I had seen him.

440 Recross-ex:

Mr. WOLFENBERGER. Didn't you also tell him you was well acquainted with this man Crumpton and he boarded at your house the summer before?

A. No, sir; I never did tell anybody.

Q. That is all.

441 GEORGE WILLIAMS.—Recalled by the defense.

Mr. WOLFENBERGER. When you had the talk with Wilson Rider where did he tell you he was at, at the time that he saw Bood Crumpton come up leading horses; that he was between the two fields in the timber?

A. Yes, sir.

Q. Did he say he spoke to him?

A. Yes, sir.

Q. Did he have any conversation with him?

A. No, sir; he said he didn't. I asked him if he talked with him, and he said no, that he just spoke to him and he passed on.

Q. Did Mr. Rider tell you he was well acquainted with the defendant?

A. Yes, sir; I asked him if he was acquainted with him; he said "Yes, I am well acquainted with him."

Q. What did he say there to you?

A. If you will let me tell you from beginning to end I can tell you what it was.

Q. Tell it as near as you can.

A. I can tell you in five minutes every word he said. He went down there that morning to look after some cotton to be picked in a field there, and he said while he was in there he heard two gun shots down below, and

after he got through looking in that field he didn't think anything about it; he went on down to the other field to look at the cotton in the other field, and just before he got to the field he met this man Burris riding a gray horse, and leading a padded sorrel. I asked him if he talked with
442 him. He said he didn't; he just spoke to him, and he passed on. I asked him if he wasn't acquainted with the man, and he said he was; he said he boarded with him last summer when he was out cutting hay. That is what he said, and all he did say. I thought he would make a good witness in the case, and I had him subpœnaed; that is the tale he told me.

Cross-examination:

Col. CLAYTON. You have given his exact language, you think.

A. Yes, sir; that is about the sum and substance of it.

Q. He said he was riding a gray horse and leading a sorrel horse?

A. Yes, sir. I asked him if he knew the man; he said yes, he said he boarded with him—boarded out there last summer when he was cutting hay.

Q. Did he tell you he knew the horses?

A. No, sir; didn't tell me anything about the horses; only the kind of horses they were. He did after that. This man Colquit rode that horse in town sometime after that and he told me it was the same horse he was on.

The COURT. It was the same horse, a sorrel spotted horse.

A. That was some time after that; he said it was the same horse he was leading.

Q. How long afterwards was it that he saw Colquitt with this horse at Muscogee?

A. I could not tell you the exact time; it was probably a week or two weeks after that; about two weeks, I think, as well as I could tell. This padded horse was the same horse he said he got from Colquitt.

443 Mr. CLAYTON. I understand you, Mr. Williams, Rider told you, when you talked to him about this matter, that he had gone down to that field to look at the cotton?

A. Yes, sir.

Q. To look at it for the purpose of seeing whether he wanted to engage in the job of picking it?

A. Yes, sir; and that he wanted to go down to look at this in the other field to see if it was any better than that or not.

Q. Just one moment; do not get ahead of me. I will ask you the questions I want you to answer and then you can answer them. When you run ahead of the lawyer you are apt to get into deep water. He went down there to get a look at the cotton?

A. Yes, sir.

Q. Who owned that cotton crop?

A. Mr. Lawson.

Q. He went down there to look at the cotton crop, to pick it if he liked it?

A. Yes, sir.

Q. And while he was there in the field he heard two guns fire?

A. Yes, sir; down that way.

Q. What way?

A. That would have been kind of northeast from where he was.
Q. Down towards where the body was found?
A. Yes, sir.
Q. Down in that direction?
A. Yes, sir.
Q. He said to you then he *strated* to look at the other cotto*m* at the other field?
A. Yes, sir; he started to the other field, and when he got nearly to the fence he met this man riding a horse and leading another, come out from that way, riding a gray horse and leading another; leading a sorrel horse.
Q. That he simply spoke and passed on?
A. Yes, sir; I asked him if he talked to him, and he said no, he
444 just spoke to him and passed on.
Q. That he knew the man, for he boarded with him last fall when he cut hay?
A. Yes, sir.
Q. Did you ask if he knew the horses?
A. No, sir; I didn't ask him if he knew the horses. He described them, the kind they were.
Q. That was the first talk you ever had with him about it?
A. Yes, sir.
Q. How far is that Sykes field from the place of the killing?
A. I suppose they are some 350 yards apart, the two fields.
Defence closes.

445 The Government thereupon offered in surrebuttal the testimony of the witness Charley Vann, who was called and examined as follows:

446 CHARLEY VANN.—Recalled in surrebuttal by the Gov.

Col. CLAYTON. When you were on the stand before you said that on a certain Sunday, the day that Sam Morgan disappeared, that you and Keyes were together hunting for pecans?
A. Yes, sir.
Q. Now, then, what time did Keyes leave your house? You said he took dinner at your house; what time did he leave your house?
A. I couldn't tell just exactly when.
Q. It was after dinner, was it not?
A. Yes, sir; it was about two o'clock, I reckon.
Q. What did you do the remainder of the afternoon?
A. I staid at home.
Q. I will ask you if on that day any time you rode down the Muscogee road, going pass*ed* Watson's place, in company with Bood Crumpton, Sam Morgan, and a man named Brown, riding from towards Davis'.
A. No, sir.
Q. Were you with them at all that day?
A. No, sir.
Q. That is not true?
A. No, sir.

Recross-examination:

Mr. WOLFENBERGER. When did you say Mr. Keyes left your house on Sunday, the third day of November?

A. He left in the evening.

Q. What time?

A. I don't know what time it was.

Q. Didn't you state on Saturday that he left there between 12 and 3 o'clock?

A. Yes, sir; it was between 12 and 3 o'clock, but I couldn't tell you what hour it was.

447 Q. You told Mr. Clayton it was about 2 o'clock. Now, was he there at all on that day?

A. Yes, sir.

Q. He was there, you say, on that day?

A. Yes, sir.

Q. Was you not not across the river on that day over there?

A. No, sir.

Q. Across the creek, Coody's Creek?

A. Yes, sir; I was across the creek that day.

Q. Whereabouts?

A. I was close to Maclemee's.

Q. Which road did you take to go there?

A. Crossed at the Roack Ford.

Q. Which way did you go from there?

A. I went up the creek.

Q. Who was with you?

A. Keyes.

Q. You crossed the creek; you lived on this side of the creek?

A. Yes, sir.

Q. On the east side of the creek?

A. Yes, sir.

Q. You crossed the creek and went up on the west side of the creek?

A. Yes; on the other side.

Q. You went up there between 8—you said you started and went up there between 8 and 9 o'clock, going up.

A. Yes, sir.

Q. And you met this man Maclemee up on that side of the creek as he came down?

A. We met him at the ford.

Q. You was on yon side from here; you was on the west side of the ford when you met him; you just crossed the creek?

A. We was right in the ford.

Q. You were going across the creek over in that direction; now, what time was that?

A. It was along somewheres about 9 o'clock.

Q. Was it not about 12 o'clock?

A. No, sir.

Testimony closed.

448 This was all the evidence offered in the case.

449 The defendant on the 31st day of May, 1890, four days after the trial had commenced, the same having commenced on May 27th, 1890, filed his application for the additional witnesses, to wit, Robert Meek, and Lige Kelly. The following is an exact copy of said application:

In the United States court for the western district of Arkansas.

UNITED STATES, PLAINTIFF.)
vs.) Charged with murder. Application.
BOOD CRUMPTON, DEFENDANT.)

Comes defendant and states that he is advised and believes that Lewis Bruer, Robert Meek, and Lige Kelly is material witnesses for him, and can not safely conclude his trial without said witnesses.

Will prove by said Bruer that William Burt was a noted whiskey peddler, and saw said Burt with a load of whiskey going in the direction of Colquitt's and R. Morgan; said Bruer lives on the Arkansas River about one mile below Martha Harris' place in Cherokee Nation.

Lige Kelly: That Burt was standing and talking with some parties unknown to defendant, and in conversation. Burt, as soon as Kelly walked up "Hush, Kelly is coming up; we have fixed on the right man and we don't want it disturbed." Said Kelly lives in Cherokee Nation about on Coody's Creek, 4 miles east of Muscogee.

450 Robert Meek: Will prove he saw Sam Morgan on or near Muscogee on the 3rd day of November, 1889, alone and in a carriage. Said Meek lived in Muskogee at that time, but now lives in Oklahoma, now as defendant is advised.

Defendant states that he is advised and believes the above witnesses are material in his case, wherefore he says he does not make this application for delay, but that justice may be done him; that he is not able to procure the attendance of said witnesses, wherefore he prays process for said witnesses and the same be executed at the expense of the Government of the United States, &c.

(Signed) BOOD CRUMPTON.

Subscribed and sworn to before me this 31st day of May, 1890.

(Signed) STEPHEN WHEELER, *Clk.*
By I. M. DODGE, *D. C.*

On the back of this application is the following: United States against Bood Crumpton. 2, 31. '90. Application. Filed May 31, 1890. S. Wheeler, clerk. W. S. Wolfenberger and B. Neal.

The court overruled the same. The defendant at the time excepted. After the close of the evidence the case was argued by counsel for the defendant, and the U. S. district attorney for the Government.

The court permitted the district attorney to waive his opening argument in the case, and the court then required counsel for defendant to proceed with their argument in the case. To which action of the
451 court, in permitting the district attorney to waive the opening argument, the defendant at the time offered no objection.

Whereupon the court charged the jury orally as to the law of the case which was taken at the time by the court stenographer as follows, to wit:

452 UNITED STATES)
vs.
BOOD CRUMPTON, ALIAS BOOD BURRIS.)

CHARGE OF COURT.

Gentlemen, the defendant stands before you charged with murder, for having on the 3rd day of November, 1889, taken the life of Sam M. Morgan. As charged in the first count of the indictment, Sam M. Morgan was wilfully and with malice aforethought shot with a gun. As charged in the second count, he was wilfully and with malice aforethought killed with a club. Certain things are to be found as necessary to show whether a murder as charged had been committed. First, jurisdiction of the court to try the case must be established. To make this jurisdiction it must be proven that either the deceased was a white man, a citizen of the United States, or the defendant was one, and that the killing occurred in the Indian country. These facts, if shown, make jurisdiction to try the case. Then, upon the merits of the case, it must appear, first, that Sam M. Morgan is dead; second, that he died by violence of the kind named in one or the other counts of this indictment; third, that this violence was used upon Morgan wilfully and with malice aforethought; fourth, that the defendant is the one that inflicted the violence that produced Morgan's death. When all of these propositions are established to the extent required by the law, to wit, beyond a reasonable doubt, there naturally and reasonably follows a verdict of guilty of murder. If all of these requisites of the crime are not so proven there is a failure to prove the case, and there results naturally and reasonably a verdict of not guilty.

In determining the question of Morgan's death we must neces-
453 sarily pass upon the question of the identity of the remains of the dead man found with the body of Morgan, for if these remains are those of Morgan, that, as a matter of course, proves his death, for the remains were the remains of a dead man, and not of a live one. Identification of a corpse as being the corpse of a particular person may be made either by inherent facts or circumstances, or by facts extraneous the corpse. When we look at the face of a dead man we can identify that face as the face of a particular person by its appearance. We can look at the countenance and from its very indescribable appearance we can identify its former possessor. But, "when decay's effacing fingers have swept the cheeks where beauty lingers," we can not identify in this way; we must then rely very largely upon circumstances extraneous of the body, such as articles of clothing or articles of property found at or near the body. The law says this may be done, and we know it is very often correctly done, even where nothing but a skeleton has been found. It may sometimes be identified by peculiar marks or by objects discovered near it."

Why, I could relate to you a case as an illustration that came within my own observation when I held court in Missouri. A young man had been murdered; they could not find the body; it disappeared; everybody was satisfied he had been murdered. 18 months afterwards a party of

surveyors, upon the prairie in one of those sloughs or low places in the prairie, found some bones; everything else had disappeared. The prairie had been burned over the fall before, and the bones had been blackened by the fire. Now, the question was upon the identity of the
454 skeleton or bones of the young man who was missing, and it happened by a singular circumstance that a short time before he had disappeared he had gone to a country doctor and had a large tooth pulled from the lower right jaw. He took it home, showed it to his mother, and she showed it to the children; all of them looked at it and talked about it, and it was carelessly thrown up in the clock. The young man disappeared. When that body was found a tooth at the place where that one belonged was missing; it was gone, and when they took that tooth and compared it, it fit the place, and by that means that body was identified, and the man was convicted of the crime of murder.

In the case of the King against Clues the body of a man after the lapse of 23 years was identified by his widow from some peculiarity about the teeth, and by a carpenter's rule; and a pair of shoes found with the remains were also identified. But in the examination of the skeleton great attention should be paid to their anatomical characteristics, upon which important facts as to the age and sex of the person depends, as this may be decisive of the whole case in favor of the accused. Where the body has been purposely mutilated, and especially where it has been dismembered with a view to its destruction by fire or otherwise, its identification becomes a matter of greater difficulty. The head being usually destroyed first for the very purpose of preventing recognition, but it occasionally happens that the agency of fire which is generally selected as the readiest and most effectual means of destruction proves inadequate to the purpose contemplated. In Webster's case the head of the
455 deceased was placed in a furnace and exposed to a strong heat for a long time. It is the celebrated case tried in Boston a great many years ago, where Dr. Webster, a prominent physician in the city, was tried for the murder of another doctor, named Parkman. It seems afterwards that, according to his statement, they fell out about some money he owed Dr. Parkman. Dr. Parkman was dunning him; he was a careless man about money matters, and was never able to pay his debts. Parkman came in and dunned him, and he grabbed up a piece of grapevine standing around the college that was used for some purpose, and struck him over the head and killed him, and then he took him and cut him up and put him in the furnace of the lab'ratory, where they destroyed skeletons of men who they had examined there, and had cut up for the purpose of furthering the principles of medical science, put him in there and put a strong heat under him, and undertook to destroy him entirely, but some blocks of mineral teeth resisted the action of the fire so effectually that they were identified by the dentist who made them as parts of a set of artificial teeth which Parkman wore at the time he disappeared. Some other portions of the body which had not been subjected to the action of the fire were also identified by their peculiar appearance. And a case is mentioned by Mr. Wills in which the remains of a female consisting of merely the trunk of the body from which the other parts had been cut, were identified by a peculiar train of circumstantial evidence. It is not necessary that the

remains should be identified by direct or positive evidence, where
456 such proof is impossible, and especially if it has been rendered so by an act of the party accused.

Now, it frequently happens that men in the commission of these crimes, for the very purpose of preventing discovery, destroy the body, as in this Webster case, while if we are to require positive identification by somebody looking into the face of the individual and swearing to his face, we would never uncover crime or punish criminals. The truth is that, generally speaking, when men commit crimes of that kind, and mutilate the body and destroy it in that way, they are of the very worst character, the men who do this are of the most hardened character, because unless a man is a man of that kind he could not do that after he had taken human life. Then it takes that kind of devilish wickedness and devilish malignity that is characterized by an act of that kind to do it, and it is not done by anybody else.

"A man was convicted of the murder of a creditor who had called to obtain payment of a debt and whose body he had cut into pieces and attempted to dispose of by burning; the effluvium and other circumstances alarmed the neighbors, and a portion of the body remained unconsumed, sufficient to prove that it was that of a male adult, and various articles which had belonged to the deceased were found on the person of the prisoner who was apprehended putting off from the Black Rock at Liverpool after having effectually endeavoured to elude justice by drowning himself. The remains of a man which had lain undiscovered upwards of 23 years, were identified by his surviving widow from peculiarities in the teeth and skull and from a carpenter's rule found with them. The identification of human remains has been facilitated by the preservation of the head and other
457 parts in spirits; by the antiputrescent action of the substances used to destroy life; by the similarity of the undigested remains of food found in the stomach, with the food which it has been known that the party has eaten; by means of clothing or other articles of the deceased traced to the possession of the prisoner and unexplained by any evidence that he became innocently possessed of them; by means of artificial teeth, and by numerous other mechanical coincidences."

I might take up your time for a long period here in reading these principles of law upon this subject. It is sufficient to say that if there is any means at hand that would satisfy your minds as reasonable men, if you were investigating such a subject out of the jury box, that the body was the body of the man it was claimed to be, why that is sufficient, whether the evidence is circumstantial or whether it is positive, in the shape of a statement of a witness who has looked into the face of the individual and has identified him from that.

Now, the law says further, and it may be regarded as settled law, "that although it is necessary in a case of murder that the identity should be proved, yet this identity may be shown as effectually by inferences from facts as from positive testimony of a witness who saw the alleged body of the deceased. And there may be cases in which, after a prima facie case from the prosecution, the defense, when it has peculiar means of knowing the history of the deceased, may have thrown on it the burden of disproving death."

458 Now, in this case, if the evidence of any character that has been offered for the purpose of showing identification, for the purpose of showing that the dead body was the body of Samuel M. Morgan, such as this letter, such as the articles of clothing he had on, such as the appearance of the party; such as any of these things that have been admitted to you as competent circumstances to enable you to pass upon that question, is sufficient to satisfy you that it was his body. If you are satisfied, beyond a reasonable doubt, that that body was the body of Samuel M. Morgan, it follows as a necessary consequence that the other p'orposition is true; that he is dead, the first one to be established. The next one is, did he die by violence of the kind named in the indictment, in either count of it. The first count charges that he was killed by being shot with a gun. The second, by being beaten to death with a club. Did he die by violence of either character? Do you have evidence of the kind of violence used, and that it was a gun or pistol shot that produced his death? If so, then he was killed as charged in the first count, that is, he was killed by having been shot to death. You are to look to the evidence, circumstantial though it may be, circumstantial as it always must be in a case like this when there is nobody present at the killing but he who does it and the one who is killed. The only way you can get it from the evidence in the case is by circumstances, by that character of evidence. Then take these circumstances; take the fact of this round hole, described by that witness, in the front of the skull.

459 Your observation in life teaches you what that was made by. You are presumed to have common knowledge of these things. If the evidence shows to your satisfaction, beyond a reasonable doubt, that that was the imprint of a bullet left in that skull, then you may take that as reasonable evidence sufficiently satisfactory to satisfy you, as reasonable men beyond a reasonable doubt that the violence was inflicted by means of a gun or pistol shot wound, that is what fractured and broke up that skull and shattered the face as it was shattered. Was this violence used in such a way and under such circumstances as that the result of it was a crime; if so, what crime was it? That is the third proposition you are to find. That, of course, necessitates our looking into the law defining the crime, and the only crime I will take any pains to define in this case is that of murder, and I will explain to you presently why that is so, and the only use we can have for manslaughter in a case like this is, that we can learn by contrast more accurately what the definition of murder means. What is meant by murder? It means the killing of a human being in such a way as to show that it was done wilfully and with malice aforethought. What is meant by its being done wilfully and with malice aforethought? What is meant by its been done wilfully? Why, intentionally and not accidentally. That is the definition of wilful as used in this connection and as given by the law. If a man, in other words, does an act intentionally which produces death, the law says that if that act is of a kind which reasonably and probably and naturally would produce death,

460 or might produce it why he is held to have intended to produce death, upon the principle that the law says when he does an act of that character he is held to have intended whatever consequences naturally and reasonably and probably flow from the act. For example,

when a man shoots at another, because that is an act which usually and probably may produce death, from the act of shooting alone he is held to have intended death.

Let us see a moment upon the subject. "A sane man, a voluntary agent, acting upon motives, must be presumed to contemplate and intend the necessary, natural, and probable consequences of his own act. If, therefore, one voluntarily or wilfully does an act which has a direct tendency to destroy another's life, the natural and necessary conclusion from the act is that he intended so to destroy such person's life."

Just what I have told you.

"If the direct tendency of an act is to produce death, and death, in fact, follows as a natural and probable consequence of the act, it is presumed that he intended such consequence, and he must stand legally responsible for it. Where a dangerous and deadly weapon is used with violence upon the person of another, as this has a tendency to destroy life, or do some great bodily harm to the person assailed, the intention to take life or do him such bodily harm is a necessary conclusion from the act."

Now, then, when you find that he did the act intentionally, which would naturally or probably produce death, you find that he intentionally produced death; and if intentionally means wilfully, you find that he wilfully produced death; and when that is done, you have one of the ele-
461 ments of the crime of murder, not the only one, not the peculiar one, not the one that distinguishes it from any other homicide, but one that is possessed by it nevertheless. How are you to find that the act was wilfully and intentionally done? That is a thing of the mind; that is something the mind is doing, something the mind contemplates, and you can not get into that mind; there is nothing of that kind possible. You can not tell its workings by actually looking at it as you look at a piece of machinery with its wheels and cogs and pulleys and the different pieces that are put together and move in harmony; you can tell what it is doing by looking at it; you can make an actual observation of it and tell exactly what it is doing; but you can not do that with the mind, yet that mind at that time is running with greater rapidity, with greater precision, with greater certainty, and having a greater purpose than that piece of inanimate machinery. You can not observe what this delicate machinery of the mind is doing; you can not tell anything about it in that way and from that method of trying to get at its purpose. You can not do it. It is impossible. The law does not require impossibilities; it takes us as we are when it calls us to the ministration and performance of these duties at its altars; it regards us as we are; it considers our capacities as they are, and it therefore does not require of us things that we can not do, but it always gives us means of doing that which is reasonable. Now, what are the means in a case like that? If we can not get at the mind by look-
ing at it running, by observing its motion as you would a piece of
462 machinery, how are you to know what the mind dictates to be done?

We are always permitted to reason from cause to effect by the rules of logic, and from an effect to the cause. If a man does a thing the thing done by him is the effect of mental purpose, and when it becomes necessary to get at that mental purpose you can take the thing done as the effect and reason back to the condition of the mind as the cause. That is logical; that is law. That is what you must do, and it is reason you are

applying when you do do it. Why? Because there is a known connection between the intelligent actions of men and the mind. No man ever does an intentional act unless his mind commands it to be done. We never take a step forward or backward or in any direction that the leg is not commanded to move by the mind before it moves. We do not hear the command. We do not know when it was given, it is given with such rapidity, and it has become with us such a routine matter that we never stop to observe what is taking place, and yet the command is given all the same. So it is with every movement that is made.

If a man goes to another and presents a gun at his head and fires the whole contents of that gun into his head, you have an act which is an act that naturally and reasonably produces death. If you have evidence of its being done by somebody in the shape of the imprint of the bullet in the skull, and in the shape of the fact that the skull was crushed, literally into different pieces, broken apart, and left in such a condition that by all rules of nature the man's life must go out from such a result, why you have a set of circumstances that show that an act of a certain
463 kind was done that usually produces a certain result; and to get at the object of that man who did that act, you take the act itself, the means used to effect that result, the very result effected—the murder of the man. You view the part of the body upon which it is made. Now, you do that do you not? You see a dead body lying out there; you see the head of that body all crushed, and you look at it and you find that on the part of the skull where it has been broken apart from the other portion of it you find the imprint of a bullet; you find where a bullet has plowed its way through that skull. Your knowledge, from observation, would teach you, and these facts would teach you, to come to a certain conclusion as to what produced that result. Now, you may take facts of that kind, and you are authorized by the law and by logic to conclude that he who did that intended to do it, and especially when you have that state of case unexplained by anything that would tend to show accidental killing, when there is not a murmuring word of evidence in the case going to show that it was done by accident, you may take these facts, and from them you are authorized as reasonable men under your consciences and oaths to conclude that he who did that did it intentionally, and if he did it intentionally he intentionally produced the result, and if he intentionally produced that result he wilfully produced it, and you have a case where the first element of the crime of murder exists.

Now what is the second element? Why, that the killing was done with malice aforethought. That is the distinguishing trait of this crime,
464 because no other crime pertaining to the taking of human life or by which a human life is taken, has that element in it under the law of the United States. You will understand that under that law there are only two divisions of crime growing out of the taking of human life. Under the laws of all the States there are many other divisions than that. Cases of crime are divided into cases of murder in the first degree and murder in the second degree, running sometimes up as high as 7 or 8 degrees of murder and manslaughter, but here we have but two degrees of crime, murder and manslaughter, and every case of the taking of human life that is a crime belongs to either one of these classes; one or the other of them. When you have a case that evidences from the circumstances

surrounding it, that it was a case that had in it malice aforethought, you have a case that necessarily shows that murder exists. What is malice aforethought? It is defined by the law to be the taking of a human life in such a way and under such circumstances as to show that it was taken by whoever did it when such person had a heart void of social duty and a mind fatally bent on mischief; that is the general definition of it. It means, in other words, a case where there is no evidence going to mitigate the offense or going to show that the party had a right under the law of self defense to take human life. Where the evidence simply shows a killing, and shows the manner of the killing, and shows nothing else, it shows murder under the law, because it shows, necessarily, from the means used, as I have enumerated to you, a case of intentional killing, and a case of
465 intentional killing that is not justified or mitigated so as to reduce it to a lower grade of crime is necessarily murder.

"Malice aforethought is the grand criterion which distinguishes murder from other homicides, and it is not so probably spite or malevolence to the deceased in particular, as any evil design in general, the dictate of a wicked, depraved, and malignant heart; a purpose to do a wicked act; and it may be either expressed or implied in law. Express malice is when one, with a sedate, deliberate mind and formed design, doth kill another, which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces, or formed grudges, and concerned schemes to do him some bodily harm. So in many cases where no malice is expressed the law will imply it, as when a man wilfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved. If a man kills another suddenly, without any or without a considerable provocation, the law implies malice, for no person, except of abandoned heart, would be guilty of such an act upon a slight or upon no apparent cause. Although the malice in murder is what is called malice aforethought, yet there is no particular period of time during which it is necessary it should have existed, or the prisoner should have contemplated the homicide. If, for example, the intent to kill or do other great bodily harm is executed the instant it springs into the mind, the offense is as truly murder as if it had dwelt there for a long period."

466 Now, again, malice is implied in every case of intentional homicide, that is to say, where once it is established that a person was intentionally killed, the law implies that malice existed in the party who caused the death, and that implication of malice remains until there is something shown in the case to show that the man was not killed in a spirit of malice or prompted by a malicious design, but if there is nothing but the mere fact of the killing and the means used, and if that has been shown before the jury, and that means is shown to be by violence such as shooting with a gun or pistol, why you have malice aforethought, because that shows an intentional homicide, and every case of intentional homicide that is not excused under the law of self-defense or that is not mitigated by the law which defines the crime to be manslaughter instead of murder, is murder, if there is an intentional killing which is not excused or mitigated, it is necessarily murder. See what the law says on that:

"If there are any circumstances of excuse or paliation which will rebut the implication of malice, it is incumbent upon the defendant to show

it, and the burden of proof rests upon him, for the law presumes that every person intends to produce the results which are the usual consequences of his act."

Now, it is a general principle of law governing criminal trials that the burden of proof rests upon the Government. It remains there until it is discharged or cast upon the other party, upon the party charged, either by a state of case established by positive evidence or by an inference or a
467 conclusion from circumstantial evidence. For example, take a case I have already put, where the shooting was with a gun or pistol. There is no explanation of that shooting. Here is a state of case, although the burden of proof as to the killing and the manner of the killing, is upon the Government, here is a set of facts resulting or made up from the manner of the killing, which goes to show with sufficient certainty that the killing was murder, and the burden of proof at that point is discharged; it only remains until it is cast off the shoulders of the Government by the introduction of proof which establishes the proposition, until the proof is overthrown the proposition is established, and the rule requiring the burden of proof to be established is discharged at that point in the case by evidence of that character, and in every case of intentional killing, intentional homicide that is not explained, that is not shown to be a case that the law would justify or mitigate, is necessarily murder. It used to be said that the proof of the killing established murder. That, when properly understood, and when made a proposition that was concrete, that is, actually made applicable to a given state of case, was a true principle, but when understood in the abstract it was misleading. You must consider, and do know, that the proof which shows a killing either shows the means used to produce that death, or it shows some other fact that is equally potential to show malice aforethoght. For instance, you take this case, if you be-
468 lieve this testimony as to the appearance of that skull, and the imprint of that bullet in it, you have the proof, the very evidence which shows the killing of Sam Morgan, shows the means used. Now, suppose Sam Morgan's body had been destroyed entirely by fire, or by some other means, then you have a fact that is equally powerful to show malice on the part of he who destroyed that body, because as a rule men do not destroy bodies when they have taken a life innocently in their own defense, for they are not benefited by an act of that kind when they took the life innocently; the first place they want to be is a place where they can look into the faces of twelve of their countrymen and be vindicated as soon as possible. They do not want to cover up, they do not want to conceal; therefore, it is laid down as a rule that concealment of a fact of that kind, the denial of a fact of that kind, is evidence of guilt, unless it is explained in such a way as to take away that presumption that the law says follows from it.

"A man can not strike another violently with a bar of iron without inflicting bodily pain. The usual effect of a leaden ball fired from a loaded pistol of the common size, at a distance of a few feet only, striking the head or back of a person, is to kill such person; the law, therefore, presumes that every one who thus fires a loaded pistol within a few feet of the object intends to kill; it therefore implies malice in him."

Whenever he intends to kill and there is not that in the case which ex-

cuses it or justifies it, he has a condition of case surrounding him
469 which means that he is doing an act prompted by malice aforethought, because the law recognizes of course that the very foundation of malice aforethought is premeditation, that is, thought of beforehand. Anything that indicates that the party thought of taking the life beforehand is a case where the law of self-defense can not prevail—and there is nothing of that kind that can prevail in this case—why? From the very fact that the taking of the life was contemplated; that it was premeditated; that it was thought of beforehand, you have a case of malice aforethought. Now, how can you tell when a thing is thought of beforehand? The law says it may be told by the selection and use of a deadly weapon alone. I see one of my fellows; for lucre, for gain, or for the satisfaction of some other base motive I then and there suddenly draw a pistol and present it at him, and fire it upon him, and take his life by that act; I selected that deadly weapon, and I intentionally and deliberately used it. The law says that is evidence of premeditation. It is evidence of premeditation sufficiently strong to lay the foundation for the assertion of the proposition that the deliberate selection and use of a deadly weapon is evidence of malice aforethought, evidence of the existence of malice aforethought. You find the existence of that as you find the existence of the fact as to whether it was wilfully done or not. Malice is a thing of the mind. You can not ascertain its existence except by circumstances, and when men tell me they would never convict a man of murder upon circumstantial evidence, they tell me they never would convict anybody of it, because the very
470 essential ingredient of murder is malice aforethought, and you can not convict any man of the crime unless you find its existence, and you can never find its existence except by circumstantial testimony. It never was found in any other way, because it is a thing of the mind alone. It has its abiding place in the mind. The effects of the existence of that thing called malice aforethought may be seen, but you never can see the thing itself; you can not apply to the thing itself any one of the five senses which are given to men as a source of their knowledge and wisdom. You can not taste it; you can not see it; you can not smell it; you can not touch it; you can not hear it. It is a thing that is invisible, that is intangible, and you can only know its existence by the effects it produces. These are circumstances. Now take the case again where you discover a dead body, as in this case, and you find upon it evidences of violence, no explanation further how that violence came there; there it is; the body is concealed in an out of the way place, the body put away there that it might not easily or readily be discovered, and marks of deadly violence upon the vital part of that body, as reasonable men, not in the jury box but outside of it, what would you conclude when you saw them? What did these reasonable men, when they come here as witnesses, conclude as to how that man had died, and why he died? You act yourselves sometimes, you, as reasonable men outside of the jury box, come to conclusions. That is where the law gets its rules. It takes into consideration what reasonable men do under a given state of facts,
471 and what they do under such circumstances it says that is sufficient. They do it with sufficient certainty, with sufficient precision, to authorize the law in formulating these rules which govern human action; they are formulated from human conduct. Then you are to take the cir-

cumstances of the killing, when a killing has occurred, the method used to produce that result, the very nature of the wound, the very part of the body upon which that wound was inflicted, and the very result that transpired from the infliction of that wound, and you may consider from all these circumstances unexplained that he who did that killing did it deliberately, did it intentionally, did it wilfully, and, in a case that is unexplained, if he did it wilfully he did it with malice aforethought. Now, that is the way you may find it; that is the way you are authorized to find it; that is what is meant by it. The law says it comprehends every case of killing that is done with premeditation, whether it is done from a motive such as a desire of gain, or no matter what the purpose may be—it may be gross recklessness. A man may step out into a crowd and kill another man whom he never saw before or heard of before. He could not have any desire to rob him and get his money; no desire to satisfy a spirit of revenge against him, except the general desire for revenge upon all men—that is defined by the law to be a state of general malevolence. He could not have any of these specific causes for taking his life, yet would any man hesitate to say he was a murderer? Why not at all, because
472 the law says it? The law says that the fact of his drawing and presenting that weapon is evidence of the deliberate selection and use of a deadly weapon, and is consequently evidence of malice aforethought. It therefore includes a case where there may be special motive, such as spite, or grudge, or ill will, or a desire to satisfy real or imaginary grievances, or a desire for lucre, or for revenge, or gain, or any other specific motive. It may grow out of this other state of case where there is no specific purpose of that kind at all, or motive of that kind. In either case, if there is a deliberately formed design to slay, and he slays in consequence of it, it is a killing with malice aforethought.

Now, gentlemen, if you believe the facts in this case as to the method of that killing, it is my duty to remind you that there are no facts explaining the use of the means used in that way that would produce that result to justify under the law or even mitigate it to a crime of less grade. That being true, if you believe these witnesses who described that wound, the method of inflicting that wound, and all of these surrounding facts and circumstances, you will be authorized to find from them, first, that he died by the means named in one or the other count of the indictment—the first or second count. You may find either one the most appropriate to the facts, and in addition thereto, you may be satisfied from these facts that the killing was murder by whoever did it. From the definition of the crime whenever it has in it both of these elements it is necessarily
473 murder. There are other propositions that are necessary to be found. What are they? You have only found the half of the case when you find this man was murdered, if you find that to be true. The Government claims that this defendant is the man who committed that crime. This other half of the proposition is to be proven with the same degree of certainty that the first of it is to be established, with no higher degree of certainty, and no lower will satisfy the requisites of the law, but it must be proven with the same degree of certainty that the first proposition must be established by.

Now, was the party who inflicted that injury upon the person of Sam Morgan doing an act that would in the light of this evidence make him

guilty of murder? You are to take the evidence and ascertain that, although it may be circumstantial in its character alone. Now, you are to find in this connection when you come to pass upon that proposition, if you can, whether he had any motive for that crime or not. It is not necessary that you should find motive if the evidence otherwise shows that the party is guilty. Motive is a very potential fact as an evidentiary fact in the case. It shows frequently the means resorted to to produce the death. It shows that the party, in other words, was murdered; it will show frequently the party who did that crime of murder, not that it is discernible in all cases; frequently it is not. It is a thing of the mind also. It is frequently so hidden, so concealed, that you can not discern it with the degree of certainty to say that you have discovered the
474 motive. As I have already told you the law does not require impossibilities; it does not say to you by the solemnity of the oath that it puts on your consciences, do your duty, administer this law, and protect those who are entitled to its protection to the full measure, and at the same time to require of you in doing it things that are impossible for you to accomplish. It does not say that. It keeps your duty all the time within the line of possibility, these reasonable possibilities that exist and surround the case that are presented to the minds of reasonable men; it does not require any more of them than that which can be accomplished by reasonable and just and impartial men; but I say when you have the evidence of motive, that becomes an evidentiary condition of the case which may point to a particular person; it may show that the crime was murder, because whenever there is a motive for it, if that motive, for example, is one in the shape of gain, why that shows deliberation, that shows premeditation. If a highwayman goes out on the public highway and kills his fellow-man for the purpose of getting his money, the fact that he had a design to get his money by that death is evidence of a premeditated purpose, is it not? Of course. So, if a man should decoy another to an out of the way place upon some pretext or another to take his life, that is evidence of a premeditated purpose; that is evidence of a design formed beforehand to take that man's life if necessary to accomplish the purpose. Therefore, I say, when motive exists in a case it will go to characterize the act done as an act of murder or as an act that does not amount to that degree of
475 crime, and it will frequently point to the party who did the act; but motive need not be proven to establish crime, nor need it be commensurate with the nature of the crime. Why, it never is commensurate, the law says. Men commit these crimes of the highest grade from motives that are entirely inadequate. Men kill others for mere trifles, for the satisfaction of the slightest affront, and for the accomplishment of a purpose that, in the mind of an honest man, in the mind of a man who had the proper regard for a human life, would not weigh a feather's weight towards producing the action. That the man who possessed that just mind would not lay his hand upon his fellow to such an extent as to take away his life for any such inconsiderable reason. The country is full of cases that occur almost daily, we might say, where men from the most trifling considerations take human life, and, therefore, we are not to stop and pass upon the question as to the adequacy of motive before we are to believe that the party has taken a human life. Let us see what the law says as to the adequacy of motive.

"It is sometimes argued, is it likely that one man should kill another for so small an article? Are we not to infer when there is a homicide which is followed by the stealing of a mere trifle that the homicide was the result of sudden passion, rather than lucri causa? Or for a mere prejudice or spite is it likely that one man will kill another and thus expose himself to the gallows? No doubt when a tender mother kills a child, or a friend kills a friend, and nothing more than the fact of
476 killing is proved, we may be led to infer misadventure, or insanity from the motivelessness of the act. But we have no right to make such inference because the motive is disproportionate. We are all of us apt to act on very inadequate motives; and the history of crime shows that murders are generally committed from motives comparatively trivial. A man unaccustomed to control his passions and unregulated by religious or moral sense exaggerates an affront, or nourishes a suspicion, until he determines that only the blood of the supposed offender can relieve the pang. So also for the smallest plunder murders have been deliberately executed. We have an illustration of this in the trial of Muller in England, in 1873, for the murder of Briggs. Briggs' watch was seen by Muller in a railway car. Briggs was asleep; the watch was exposed; and Muller killed Briggs by a sudden attack, and succeeded in making his escape. He was afterwards arrested, convicted on circumstantial evidence, and before the execution, confessed the homicide with the motive. Until the confession the justice of the conviction was largely criticised, on the ground that the stealing of a watch was not a motive that could explain a murder so bold, so cruel, and with chances of exposure so great. But the reply to this is obvious. Crime is rarely logical. Under a government where the laws are executed with ordinary certainty, all crime is a blunder as well as a wrong. If we should hold that no crime is to be punished, except such as is rational, then there would be no crime to be punished, for no crime can be found that is rational. The motive is never correlative to the crime; never accurately proportioned to it. Nor
477 does this apply solely to the very poor. Very rich men have been known to defraud others even of trifles, to forge wills, to kidnap, and kill, so that an inheritance might be theirs. When a powerful passion seeks gratification, it is no extenuation that the act is illogical; for when passion is once allowed to operate, reason loosens its restraints."

It is not rational from the standpoint of self-interest of the party who commits it. Why, you take a case of murder, for example; what is there from a rational standpoint that would ever cause us to look at that act as being rational, looking at the interest of the party himself? Sooner or later he is liable to be discovered; he may carry that load of guilt about with him for years and years before discovery, yet it is a millstone around his neck; it is a weight pressing upon his conscience that he can scarcely bear up against, because man is so constituted, he has not been made so that his heart is a fit habitation for a terrible secret of that character, and if he is called upon to carry a load of guilt of that kind through life with him he has got something that almost causes him to exclaim like Cain when the Lord cursed him, "My punishment is greater than I can bear." And from that alone if it was rational, if he would take a proper view of the thing, if he would consult his own peace of mind, for example, he would never lay his hand upon his fellow man in such a way as to be a murderer.

But the best of men sometimes are put in a position where under the law of self-defense they have a right to take a human life, and it is their duty to do it. There is no guilty conscience left behind an act of that
478 kind. There may be regrets, there may be sorrow that the necessity existed, but it is not that kind of guilt that weighs down the heart of a man who, for money, for gain, or for any malevolent or wicked purpose, takes a human life; it is not that sort of feeling. Therefore we may just as well consider that no crime is logical, and that he who would consider his own self-interest, if he would take a rational view of the act, would never do it.

"The motive is never correlative to the crime, never accurately proportioned to it, nor does this apply solely to the very poor. Very rich men have been known to defraud others even of trifles, to forge wills, to kidnap, and kill so that an inheritance might be theirs. When a powerful passion seeks gratification it is no extenuation that the act is illogical, for when passion is once allowed to operate reason loosens its restraints."

Now, I say, if you can find motive in the case, although it may be inadequate, out of entire proportion to the nature of the act done, as you must find it in every case where murder has been committed, still you can consider it, and it becomes an item of evidence tending to throw light upon the transaction, and to develop, it may be, who the party was who committed the act.

Now, then, the next proposition that you are to look to when you are seeking to find whether the defendant is guilty or innocent of this crime is whether he had the means with which to commit this crime as it
479 was committed. He must have the means to do it. If he had the means, why then it is another point in the case. The possession of means, of course, does not of itself show guilt; still, it is necessary to have it in order to bring guilt home to anybody, because it is physically impossible for a man to accomplish a result without the means at hand to accomplish that result in the way it was accomplished.

"Whether the defendant had an opportunity to commit the crime."

Now, he must have had an opportunity. You are to look to the evidence to see if he was associated with Morgan on that morning; whether he was seen with him, and what are the other circumstances pointing toward the guilt of the defendant. All of these facts that have gone to you are circumstances in the case for the purpose of showing whether or not the defendant is the party who is guilty of that offense. There are many circumstances that have gone to you in this case for the purpose of throwing light upon it. It is a principle of law that if a party is found in possession of the fruits of crime recently after the crime has been committed, that that may be taken into consideration by you for the purpose, first, of calling upon the party to explain that possession, just like you do in a case of larceny. A horse is stolen; that horse is found in the possession of a party shortly thereafter; now the law says that that party, if he has an honest possession of the property, has at hand the reasonable means of explaining that honest possession, and if he does not do it, if he does not
480 show it is an honest possession upon his part, why the presumption prevails against him from the fact of such possession, and you may convict in a case of larceny upon it if it is proven the larceny has been

committed by somebody; you may bring the fact of guilt home to a particular party who is in possession of that property in a larceny case. So you may in a case of murder.

Hear what the law says upon the subject:

"In the last section, the effect of the recent possession of the fruits of crime was considered so far as such possession was a visible one, capable of direct proof, and conferring by actual identification of the object found in possession. But such possession may also sometimes be inferred from observed circumstances. In most cases the fruits of crime themselves are so well concealed from view by the perpetrator as to furnish no immediate evidence against him. There is nothing visible in his possession which can be directly traced to or connected with the offense. But they sometimes betray themselves by their consequences, as by a sudden and material change in life or circumstances, indicating beyond question the recent receipt of money or property from some quarter. When a person previously known to be poor is found shortly after the robbery, larceny, or murder in the possession of considerable wealth it is always a circumstance of suspicion, and when corroborated by others, of material weight in conecting the crime with its perpetrator. It is, generally, one of the earliest indicatory
481 circumstances that are discovered, and, in several reported casess, has had the effect of first attracting attention in the right direction and affording the first available clew to the discovery of the defendant. In the case of Moses Drayne, where a traveler had been murdered at an inn for a sum of money which he had with him and had deposited with the innkeeper for safe keeping, it appeared in evidence that the 'ostler of the inn, who was at the time worth nothing of his own, shortly after the murder lent sixty pounds to a woman who kept an inn in the same town. It appeared also that the circumstances of the innkeeper himself had suddenly improved. For, before the murder, he was so poor that his landlord would not trust him for a quarter's rent, but would make him pay every six weeks; and he could not be trusted for malt, but was forced to pay for one barrel under another. But shortly after he bought a ruined malt house and new built it, and usually laid out forty pounds in a day to buy barley. There was also observed upon a sudden a great change in his daughters' condition, both as to their clothes and otherwise; and if there was but a hood bought for one of the daughters, there was a piece of gold changed, and they were observed to have gold in great plenty. In the French case of M. D'Anglade, it was proved that both the real criminals had suddenly, from a state of lowest indigence, appeared to be in affluent circumstances, dressing in expensive clothing and showing large sums of money; and that one of them had purchased an estate for which he paid between nine and ten thousand livres.

482 In the English case of Rex versus Burdock, a similar change in the prisoner's habits and mode of life was the circumstance which first led to suspicion and the subsequent discovery of the crime. And in the late New Jersey case of Peter Robinson, the same circumstance was instrumental in leading to a similar result. It is to be observed, however, that this circum-tance always requires to be corroborated by others; and, standing alone, is not considered a sufficient ground for putting a party on his defense. It presents in itself, merely a coincidence which, however natural or reasonable it may appear on the supposition of the guilt

of the party indicated, is nevertheless capable of more or less satisfactory solution and explanation, on suppositions entirely consistent with his innocence."

"The possession of stolen goods, recently after the loss of them, may be indicative not merely of the offense of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. Upon an indictment for arson, proof that property which was in the house at the time it was burned, was soon afterwards found in the possession of the prisoner, was held to raise a presumption that he was present and concerned in the offense.

This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognized. It is upon the same principle that a sudden and otherwise inexplicable transition from a state of in-
483 digence and a consequent change of habits, or a profuse or unwonted expenditure inconsistent with the position in life of the party, is sometimes a circumstance extremely unfavorable to the supposition of innocence.

In the first of these cases the question should be asked, was the fact that the deceased was in the possession of money, particularly if the amount be considerable, known to any one; and if so, to whom?" etc.

So it is in all these cases, if the party is found in possession of the property of the man whose life has been taken, the party who has such possession is called upon to make an explanation of them to show that that possession is reasonable and is honest; that is regarded at that point just as in a case of larceny. Now, again, the question that you are to ask yourselves in this case is, whether the property of Morgan was found in the possession of this defendant. If so, what was the character of that property; and if so, what explanation has he made of that possession? If he has made an explanation that is reasonable, or if his theory of the statements made by him shows reasonable conduct upon the part of Morgan; that he fell in with some person, whether a stranger or not, and that he was going to the Pawnee agency for a certain purpose, and whether under such circumstances it would be natural, reasonable, and probable conduct upon the part of this defendant to do as he did do; then whether any other property was upon his person that was afterwards missing and whether or not the property of the
484 deceased was found in the possession of this defendant; whether or not it was probable and reasonable if he was going out on that far journey, to that wild country, to him an unexplored country, that he would give up the weapon that he was in the habit of carrying up in the neighborhood where he was known, and where everybody knew him, whether that conduct as claimed by the statements of the defendant was reasonable and natural and probable conduct upon his part; if it was unnatural, if it was unreasonable, if it was improbable, then it does not go to sustain the theory asserted by the defendant. He is required to account for the possession of that property. And in that connection the inquiry may naturally be propounded by you why is it that he would take the horses and not take his watch, whether or not the watch was a thing that it would be improbable if he was going away, he would give it to the defendant, and if it was a thing that was well known there, that he would not dare to take it; if so, that

would be a reason why the defendant would not take it. Then, why take the horses? Well, you are to investigate as reasonable men. If he is the man who did the killing, if he took the life of the man, and the taking of it was for the money he had, the horses turned loose there would certainly have attracted attention, and might be the means of leading to the discovery of the missing man sooner than he was discovered. Then as a matter of precaution it might not be reasonable action in the light of his condition if he was guilty, and he would take the horses for that purpose and also
485 for gain. Now, then, I say he is required, if he had possession of the property of this missing man to show such facts and circumstances as will satisfy you as reasonable men that that possession was an honest possession. If he shows that, then the fact arising from the possession, from what is called guilty possession, of the property taken from the murdered man, would disappear from the case as against the defendant. It would no longer be guilty possession. But if he has not shown that, it does not disappear and it prevails as evidence in the case, and it can be considered by you. Now, of course, you do not consider it alone, any more than you do consider any other fact alone, but in order to ascertain whether that possession is innocent or not, you are necessarily called upon to look to the other evidence to see what statements the defendant made about it, to see whether he forged, or undertook to forge, any evidence in the case, whether he made any false statements in regard to the transaction, or in regard to the disappearance of this man; if he did, the law says it is a foundation of a presumption against the man. Where he forges testimony in a case, that is also the foundation of a presumption against him, upon the principle that he who is without guilt does not rely upon false evidence, does not go around to anybody and lie; it is not in him. You can not tell a lie that you are not driven to a half dozen others to cover it up. It is a wicked enemy of yours. It is never your friend. It is always at war with you, and whenever you think it is serving you, it is plunging its
486 dagger to your very heart, figuratively speaking, and when a man learns to be a liar he is educating his mind to the commission of almost any crime. It is the foundation of all crime, and every man who is conscious of innocence as a rule relies upon that which will be his friend and serve him, and he does not as a rule fabricate falsehoods, or stories that are falsehoods; he does not fabricate evidence, because it will not serve him. Man is a selfish creature; he is naturally looking to himself and to his own protection; it is his duty to look to it, and he will, therefore, necessarily and naturally adopt that means which will best serve him. He will not adopt that which will turn out to be his worst enemy. The law recognizes that, and it considers as a rule that men only do that thing when they can not do any better, when they can not help it; that they, in other words, only resort to that evidence when they have not got the truth to serve them, and it therefore lays it down as a legal axiom that he who fabricates evidence, he who forges testimony, is forging that which may be used as a foundation of a presumption against him; in fact, the law says it must be used that way. It is not necessarily conclusive against him in itself, because there are exceptions to this rule. Men who are innocent of crime from a misconception of what their rights are and what will best serve them may sometimes rely upon falsehood; that is the exception, though, to the general rule of human conduct. Because they may some-

times do that, that circumstance is not to be taken as conclusive alone, but if it exists in a case with other inculpatory facts, inculpatory circumstances, why, it becomes stronger than when standing alone, though unexplained.

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You are to take into consideration the fact of his ommission to produce the witnesses, if he has them, or items of evidence, if he has it in his power to produce such items of proof.

Now, then, we look to the evidence to see if there are any inculpatory facts against the defendant, such as the possession of the property, or such as a fabrication of statements that have been proven to be false, statements that, if true, would be self-serving in their character, would have a tendency to vindicate the defendant, but if they are shown to be false, such as the representations by means of a letter that the party was then alive when he was dead. One of the circumstances which strongly led to the conviction of Doctor Webster in the celebrated case I have referred to, was the forgery of letters, not that he said in these letters—they were signed fictitiously—that Parkman was seen after he was dead, but he simply set out the supposition that he was alive. He put hypothetical cases in these different letters, and the criminal part of it, and damaging part of it, in the estimation of the court and jury, was, that he wrote them in a concealed hand, a disguised hand, proven to be his own hand, but disguised, and they were considered as strong inculpatory facts against him, as accusatory facts, because he was seeking to create a false belief, a false conviction in the minds of men as to what had become of the man he had killed.

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Now, you are to look to it in this case to see whether or not there are facts of that kind here, not only these facts, but any other facts and circumstances you may take into consideration, and after you have gathered them all up and considered their combined weight, their combined strength and proving power, then you are to see how many of them have been explained away by the testimony of the defendant himself or by anybody offered in his behalf; if they have not they remain for whatever they may be worth as proving facts according to the extent and way they may be established by the proof, and their nature as proving facts after they have been established. That is the way you are to look at the case, and it is a good rule when you are starting in your investigation to gather up all accusatory facts, see what they are; see first whether they prove the death of the party by the means charged in the indictment; see whether there was an opportunity upon the part of the defendant; whether there was a motive upon his part for this act, what that motive was, and what that opportunity was; see what his connection with the deceased was, what was his relation to him at the time when he was seen with him, what was found in his possession afterwards; what explanation of that possession he has made; what other acts that are indicative of guilt on his part have been shown as having been performed by him, and after you have gotten all of these together see what they are in the light of the other evidence in the case, and in the light of the other testimony.

Now, you pass upon the credibility of witnesses. I have outlined the case to you. I have given you the law defining crime. I have given you the law bearing upon this matter and the weight to be attached to these facts that may be accusatory in their character or

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that may have a tendency to exonorate the defendant. You are the judges of the credibility of the witnesses in the case. You pass upon the amount of credit you attach to the statements of each and every witness; you consider these witnesses—their appearance before you, the way in which they gave their evidence, their very conduct in your presence, the consistency and reasonableness and probability of their statements in their own light and in the light of the other evidence. If a statement of a witness, when viewed in the light of all the evidence and in its own light, is reasonable and consistent and probable, according to your observation of the acts and statements of men, it is entitled to credit, it is entitled to credence upon your part; and if it has that appearance all the other circumstances in the case will tend to show its credibility, because they are the tests of its truthfulness. These are the means that you are to apply to ascertain whether it is true or false. When you find a man's statements that are inconsistent in different parts upon material matters, upon that which is the very substance of his testimony, the very inconsistency of that evidence is evidence of its falsehood, and all the other evidence in the case will tend to show its falsity; so it is that you take the evidence of each and every witness and compare it with all the other evidence that is credible and reliable
490 in the case. It is not to be expected that all evidence in every case is consistent, because some evidence is true and some is false, and truth and falsehood are never harmonious with each other, but you are to find that which is consistent and reasonable in itself, and the consistency of such evidence goes to show its truthful character.

Now, then, take these witnesses, see the character of the evidence they have given; see whether it is reliable or not, and if it is reliable, how much it proves, each and every fact. These cases are necessarily to be established by many facts, many circumstances. It is a fact that when men resort to these heinous and wicked things they do not call in witnesses to see them do it; that is positive evidence. You must necessarily rely upon that which is denominated as circumstantial testimony in the case. That is just as strong as any other proof if it is of that proving power to make out a case that would be made out by the testimony of one credible, uncontradicted, and reliable eyewitness. When a man stands up and swears that he saw another shoot his fellow-man, shoot him down under such circumstances, in a way that under the law it makes the crime of murder; now that is enough evidence to warrant you in convicting, because you would believe that, because if that man was reliable, if he was credible, you would believe it was a murder; you would believe that he who did that act was guilty of the crime of murder under the law. Out of the mouth of one witness condemnation may ensue, says the law, but as a matter of fact it never takes place in that way, because whenever you resort
491 to positive evidence and depend on that alone, and if you resort to it, and you have to resort to it when you have but one positive eyewitness, why there will come in a troop of circumstances in that case corroborating what that man says in the shape of the conduct afterwards of the party who does the killing, in the shape of many other things that are marshaled as evidence in the case to confirm what the positive eyewitness says. So it is in a case where circumstances are resorted to; if the fact or circumstance is a true fact or circumstance, it has got a whole army

of friends in the shape of other circumstances to corroborate and sustain it. So you never depend upon positive testimony that is alone equal to the testimony of one credible uncontradicted eyewitness. It is either more or less in every case, if a certain theory of it is true, if in this case for example, it is true that this man was murdered, murdered by this defendant, you have got more evidence in the case than would be equal to the testimony of one credible uncontradicted positive eyewitness to establish the fact. Then that is confirmatory of the other; on the other hand, if it is not true that he is guilty of that crime, you have got less evidence in the case than would be the testimony of one credible uncontradicted eyewitness, but when you have no positive proof of the fact, and as a rule you do not have, you may have when you come to pass upon these cases occurring from sudden impulse and from sudden passion, or when a man starts out upon a mission of revenge. There are peculiar characteristics connected with
492 crime that we may all observe, when we have had a familiarity with these criminal acts as committed by others. For instance, you take a man who becomes enraged; he has received some wrong; it it may be a real wrong, but not such a wrong as he would have a right to kill for it; or it may be some imaginary wrong, and he goes off in a towering rage; he does not stop to consider the consequences, and he shoots down his fellow-man; it may be in the presence of other eyewitnesses. Now, there is a case where he kills for revenge, for malice, to satisfy a grievance that he has received, real or imaginary. When you have a case of killing with characteristics of that kind you will have frequently—generally you will have a positive eyewitness to the fact. But whenever a killing is for lucre or for gain, the first thing that he who does it is to seek an opportunity for that; he does it clandestinely; he does not do it in the presence of other men, because he could not rob his victim after he had killed him if he was to do that. The primary object in the case where gain is the motive, is that gain—is to get it; that object would be defeated He wants to accomplish that result, and he only kills to remove the means that prevent him from obtaining that gain. Now, when you have a crime of that kind presented to you, you never find it done in the presence of eyewitnesses, as a man of passion rushing out and kills in the presence of his fellow-men; that is the peculiar characteristic of that kind of crime when committed in that way. It is done first by deliberately-formed design. The party who is killed
493 is decoyed out of the way. If he can not be killed by any other means, he is gotten to a lonely place where no eyewitness can see the killing, no human eye can witness it, except the eye of the man who does it; that is the first thing that is done. Therefore, as a necessary consequence, when you have a case of killing with motive of that kind, and if you have a case with that sort of motive, you always have murder, because there is prior deliberation of the basest kind to prompt that act; therefore, you must go to circumstantial evidence, just as has been done so many times in the courts of the land when they seek to uncover crime by the aid of juries and the officers of the Government. One of the most noted cases of that kind where circumstantial evidence was relied upon to prove everything in the case, to prove the identity of the body, to prove the means used to produce his death, to prove the fact that the party, Udderzook, who was charged with that killing, was the party

who did it. It was the Com. v. Udderzook, and was one of the most noted cases of circumstantial evidence in the history of crime, because it seldom happens that every proposition in the case is to be established in that way. It was a case where this man Udderzook paid for a large policy upon the person of the man whom he afterwards murdered, and he contrived it so that at a certain time a shop, which he had in the outskirts of Philadelphia, was set on fire, and by the time the fire had progressed far enough to char a dead body, which he had in that shop, which he had gotten from a graveyard and put in that shop, he caused a discovery to
494 be made and people rushed there and rescued the body. It was supposed and believed by many at the time to be the body of this man upon whom he held this heavy insurance, but it seems afterwards that the insurance company became suspicious and refused to pay the policy. An inquiry was instituted that lasted for quite a while. Still the man Goss who was insured was lost; he was a brother-in-law of Udderzook. No trace of him could be found. Udderzook had been remitting money to him to keep his mouth shut. Goss had failed to get the money. He was becoming very anxious about it. He was down in an interior town in Pennsylvania, Luzern or some town there; there Udderzook got him and decoyed him out in the woods and murdered him. His remains were afterwards found, by the buzzards soaring around over the body, and it was discovered there in a decomposed condition. It was a case of that kind, and I will read you what the court said in that case:

"The case of the Commonwealth rests upon what is known as circumstantial evidence. And indeed where wilful, deliberate murder, contemplated beforehand, is committed, it rarely occurs that direct positive evidence respecting it exists. Perpetrated as it usually is by lying in wait, by means of poison, or by falling upon the victim when no one is by, the only evidence must commonly be found in circumstances attending it. And this character of evidence is ascertained by experience to be little if any less satisfactory than that which is known as direct or positive. Where the circumstances relied upon are properly established, and inferences arising from each one, and from all of them combined, point
495 naturally in one direction, there is no greater danger in following them to their conclution than attends all human investigation. That we may err in such cases is possible; but so we may where the evidence is direct or positive; the circumstances may, possibly, mislead, but so may the eyes, or the ears, or the dishonesty of witnesses. 'As was said by Chief Justice Gibson, in the case of the Commonwealth v. Harman, 4 Barr, 269, the only difference between positive and circumstancial evidence is that the former is more immediate, and has fewer links in the chain of connection between the premises and conclusion, but there may be perjury in both. A man may as well swear falsely to an absolute knowledge of a fact as a number of facts from which, if true, the question of innocence or guilt depends. No human testimony is superior to doubt. The machinery of criminal justice, like every other production of man, is necessarily imperfect, but you are not therefore to stop its wheels. Innocent men have doubtless been convicted and executed on circumstantial evidence, but innocent men have sometimes been convicted and executed on what is called positive proof. All evidence is more or less circumstantial, the difference being only in the degree, and it is sufficient for the purpose when

it excludes disbelief; that is, actual disbelief; for he who is to pass upon the question is not at liberty to disbelieve as a juror while he believes as a man. It is enough that his conscience is clear."

Now a word or two further as to the credibility of witnesses.
496 You have heard and seen all of these witnesses who have been before you. You are reasonable men. You are competent to pass upon every fact by the aid of these rules I have given you, and am about to give you. You have seen the defendant upon the stand; you have heard his statements; you are to pass upon their reasonableness and their probability in their own light and in the light of the other evidence in the case. In passing upon his evidence you are necessarily required to consider his interest in the case. He has the largest interest in this case that any man can ever have in any case upon the earth. He is the party to be affected by the result of your verdict one way or the other, and to be affected to such an extent as to weigh upon his mind presumably as it would upon the mind of every man. There is the strongest motive that can ever operate upon the human mind to prompt it to entertain a desire that the jury listening to him would take that view of the case that would benefit him or that would cover up the charge against him to such an extent as that he would not be connected with it. It is but human nature. We are creatures of motive. It is part of our nature. If that motive is strong, if it operates upon us with great strength and great power, naturally it has a greater tendency to swerve men from the line of truth than if it was slight or if no motive at all exists. Therefore, the probability of a man swerving from the line of truth is in exact proportion to the strength of the motive. You are then to consider his attitude and above all to consider his evidence in the case, in the light of the other facts confirming what he says. If they
497 corroborate what he says, his testimony is strengthend; if they contradict what he says, if his conduct at the time and subsequent thereto and at all times is inconsistent with the theory of innocence that he asserts, then his theory is weakened in proportion as you may attach credit to his conduct under the circumstances as being against him. You are to consider it in that attitude, in the light of all the other testimony in the case.

You are required to be satisfied beyond a reasonable doubt of the guilt of the defendant; that is, you are to be satisfied as twelve reasonable men, as you would require your minds to be satisfied upon a proposition of like character if it was presented to you outside of the courthouse as a citizen, considering your double duty, your duty to the community to uncover crime and find out who the criminal is. That is your duty to your fellowmen, and your duty to a particular party at the same time, to see that he is not branded as a criminal when the facts and evidence do not warrant that in being done. Consider that double duty; consider what would be your duty in the premises. If the facts presented in this case are of a character to carry your minds as citizens to a point of belief, so that you would entertain that belief, and act upon it, why, then, you are convinced, you must be convinced, the case is proven, it is made out, because that is the extent to which the proof must go to make a case—simply that and no further. It is not required to go beyond that. When it goes that far the case is said to be established so that reasonable men believe it, and it is consequently beyond reasonable doubt. As long as there is that
498 sort of doubt in a case reasonable men do not believe it. That does not mean as long as there is any doubt in the case. There is always

some sort of doubt. There is always a conjectural doubt. If there was not the time consumed in these trials would not necessarily be consumed, but you can always find doubt in every case, and pertaining to every proposition in life, and every transaction in life. But that is not the kind of doubt that men regard. We do not pay any attention to a doubt unless it amount' to that kind of a doubt which is defined as a real substantial doubt of guilt, flowing naturally and rensonably from the facts and circumstances in the case, so as to leave the minds of the jury in the condition that they are not able to say that they have an abiding conviction to this extent, called a moral certainty, or to a high degree certainty, that they have that abiding conviction to that high decree of certainty, so that they would pronounce the guilt of the party as reasonable men. That is the kind of doubt alone that is to prevail. That is the definition of this reasonable doubt that is to prevail in a case. The doubt must come up to that before you can pay any attention to it in the consideration of a proposition that is before you as jurymen. All other doubts that are mere conjectures, that are mere surmises, or that have no foundation, are to be cast to the winds.

Now, on the other hand, the law says that the proof to a moral certainty means that high degree of probability, that degree of certainty that excludes; in the language of the law, actual disbelief. When your
499 minds are carried beyond that they are in the field of belief, they are in the field of conviction, and you are to entertain belief of guilt when it goes that far, when the proof goes that far.

Now, gentlemen, consider this evidence, consider these principles of law I have given you, ascertain whether or not this defendant is guilty or innocent. If he is guilty it is your sworn duty to pronounce him guilty. If he is innocent it is likewise your duty to pronounce him innocent. If you find him guilty you will say in your verdict under what count of the indictment you find him guilty. You will say if you find him guilty as charged in the first count of the indictment: We, the jury, find the defendant guilty of murder as charged in the first count of the indictment. If you find him guilty as charged in the second count you will say: We, the jury, find the defendant guilty of murder as charged in the second count of the indictment.

In this matter of the name, one more word and I am done. The name is written in the indictment and generally alluded to by the witnesses as Sam M. Morgan. One of the witnesses, his brother, testified that that is the name he was usually known by in that community. If that is so, that is sufficient, to set out his name in that way. "Sam," as everybody knows, is a nickname for Samuel; but if that is the name that the young man usually went by, that is sufficient. The law requiring the name to be set out is a rule of certainty, and whenever that rule is subserved
500 that is sufficient, and it is subserved when you can point to the man who is designated in the indictment by a certain name.

Now, gentlemen, I ask you to take the case. I ask you to give it that consideration that it merits. Do that equal and exact justice that I know you will do in the case, and see that the law is administered if it has been violated, see that it is vindicated if it has been broken by the taking of the life of this man Morgan in the way described by the circumstances given to you by the witnesses. On the other hand, if it has not been taken by the defendant, why then your duty would be to acquit him and vindicate the law in that way.

I submit the case to you, and ask you to uphold the laws of your country, and that means everything in the case; it means your whole duty. You are to uphold them by pronouncing guilt if guilt is established; or you are to uphold them by pronouncing innocence if innocence exists.

You will retire, gentlemen, to consider the case.

6.30 P. M.

501 To which charge the defendant at the time offered no objections, nor did he at the time offer any objections to the time or manner of delivery of same.

In regard to the 4th cause of error set out in the motion for new trial, the following is agreed to by the U. S. district attorney and counsel for defendant, as being the facts which led to the statement of the district attorney in his argument to the jury, to wit:

"That during the argument of the case before the jury, defendant's counsel, Berkley Neal, esq., having said to the jury, 'either the defendant or Burt (a Government witness) is guilty of this crime. I will show you that Burt is guilty, and therefore that defendant is not.' Then the district attorney in his closing argument said: 'The issue is squarely made by Mr. Neal, that either the defendant or Wm. Burt is guilty of this crime; I have shown you that Burt is not guilty; therefore, by his logic, the defendant is guilty.' This was not objected to, and no exceptions taken at the time."

The jury, after deliberation, having convicted the defendant of murder in the first degree, the defendant filed his motion for a new trial in the following words, to wit:

In the circuit court of the United States, for the western district of Arkansas.

THE UNITED STATES, PLAINTIFF, *vs.* BOOD CRUMPTON, DEFENDANT. } Amended motion for new trial.

502 And now comes the defendant, Bood Crumpton, by his attorneys, and moves the court to set aside the verdict of the jury in this case for the following reasons, to wit:

1st. Because the verdict of the jury was contrary to the evidence.

2nd. Because the verdict was contrary to both the law and the evidence.

4th. Because the court erred in permitting the U. S. attorney to refer in his argument to matters not in testimony, to wit: That the issue was directly made between defendant and William Burt, and one or the other was guilty of murder, and that said Burt was not guilty, and therefore the defendant surely was, when in fact no such issue was ever made in the case.

5th. That the court erred in refusing to grant defendant sufficient time to procure the testimony of the witnesses Robert Meek, Lige Kelley, and Louis Brewer, which was material to his defense, the substance of whose testimony was set up in defendant's application for these witnesses, filed herein May 31st, 1890, the substance of which only became known to this defendant during the course of his trial and immediately before the filing of said application, and asks that said application be made a part of this motion.

6th. Because this defendant has discovered new testimony since the trial material to his defense heretofore unknown to this defendant, and which could not have been known to him by the exercise of due dilligence at an earlier time. This testimony is fully set forth in the following affidavits, which defendant asks to be made part hereof.

503 Wherefore defendant prays that the court set aside the verdict of the jury, and grant him a new trial, that justice may be done him.

(Signed)

DU VAL & CRAVENS and
W. S. WOLFENBERGER,
Attorneys for Defendant Bood Crumpton.

And said motion having been argued by W. S. Wolfenberger as attorney for defendant, and by the district attorney for the Government, the court, after such argument, overruled the same, to which ruling defendant at the time excepted.

Time was then given defendant to prepare his bill of exceptions, and he now tenders this his bill of exceptions, and prays that they may be signed, sealed, and made part of the record in this case, which is accordingly done.

I. C. PARKER,
U. S. Dist. Judge, Holding Circuit Court.

504 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the circuit court of the United States for the western district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States of America, plaintiff, and Bood Crumpton alias Bood Burris, def't, a manifest error hath happened, to the great damage of the said Bood Crumpton alias Bood Burris, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 21 day of August, in the year of our Lord one thousand eight hundred and ninety.

[SEAL.] STEPHEN WHEELER,
Clerk of the Circuit Court of the United States.

Allowed by

I. C. PARKER.
U. S. Dist. Judge, Holding Circuit Court.

505 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western dis't of Arkansas, wherein Bood Crumpton, alias Bood Burris, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac C. Parker, judge of the district court of the United States, this 29 day of August, in the year of our Lord one thousand eight hundred and ninety.

I. C. PARKER,
U. S. District Judge, Holding Circuit Court.

506 On this 29 day of August, in the year of our Lord one thousand eight hundred and ninety, personally appeared Wm. M. Cavens before me, the subscriber, he being the attorney of record for Bood Crumpton alias Bood Burris, and makes oath that he delivered a true copy of the within citation to William H. H. Clayton, U. S. dis't att'y for the west'n dis't of Ark., on the 29th day of Aug., 1890. Wm. M. Cravens.

Sworn to and subscribed the 29th day of August, A. D. 1890.
[SEAL.] STEPHEN WHEELER, *Clk.*
By I. M. DODGE, *D. C.*

507 UNITED STATES OF AMERICA,
Western District of Arkansas:

I, Stephen Wheeler, clerk of the circuit court of the United States in and for the western district of Arkansas, hereby certify that the foregoing is a true and correct transcript of the record, indictment, and testimony in the case of The United States vs. Bood Crumpton alias Bood Burris, which indictment and testimony are on file in this office. Also that writ of error and citation are attached.

I testimony whereof I have hereunto set my hand and affixed the seal of said court at Fort Smith, in said district, this 10th day of September, A. D. 1890.

[SEAL.] STEPHEN WHEELER, *Clerk.*
By I. M. DODGE, *D. C.*

508 (Indorsement on cover:) Supreme Court U. S. Clerk's office. Received Sep. 16, 1890. No. 1310. Bood Crumpton alias Bood Burris, plaintiff in error, vs. The United States. W. Arkansas, C. C. U. S. Filed September 26, 1890.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

BOOD CRUMPTON, ALIAS BOOD BARRIS, plaintiff in error, *vs.* THE UNITED STATES. } No. 1310.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF ARKANSAS.

MOTION TO ADVANCE.

And now, October 27, 1890, comes the Attorney-General and moves the court to advance the above-named case on the docket of this court, to be heard at the present term. The plaintiff in error is under sentence of death for a capital offense. This is a writ of error to the judgment and sentence, permitted by section 6 of the act of Congress approved January 25, 1889 (25 Stat., 656). The section provides that all such writs of error shall be advanced to a speedy hearing on motion of either party.

Respectfully submitted,

W. H. H. MILLER,
Attorney-General.

SUPREME COURT, U.S.
FILED.
NOV 17 1890
JAMES H. McKENNEY,

In the Supreme Court of the United States,

OCTOBER TERM, 1890.

BOOD CRUMPTON
vs.
THE UNITED STATES. } MURDER.

No. 1310.

In the Supreme Court of the United States,

OCTOBER TERM, 1890.

BOOD CRUMPTON
vs.
THE UNITED STATES. } MURDER.

No. 1310.

At the February term of the United States Circuit Court for the Western District of Arkansas, Bood Crumpton was indicted for murder and was arraigned at the same term of the Court, and entered his plea of "not guilty;" and at the May term of the Court said Bood Crumpton's case was called, and he was tried and convicted. Motion for a new trial was filed and overruled, and appeal taken to this Court.

First: That the verdict was contrary to the evidence.

Government witnesses: First, Jones Lawson; second, Robert Morgan; third, M. M. Edmiston; fourth, Martha Harris; fifth, Mrs. Nicholson; sixth, H. L. Hoyt; seventh, James Lowrey; eighth, Harrison Dykes; ninth, Richard Colquet; tenth, William Burt; eleventh, Wilson Rider; twelfth, W. R. Grider; thirteenth, C. B. Harris; fourteenth, William Keys; fifteenth, Charley Glass; sixteenth, William McNance; seventeenth, Joseph Harris; eighteenth, Ann Colquet; nineteenth, Susan Morgan; twentieth, G. W. Williams; twenty-first, R. B. Ramsey.

This is a purely circumstantial case. The question here is, to find out who had the motive to kill Sam Morgan, and did this defendant have the motive, or did some one else have the motive to do it?

See the conduct of Robert Morgan. He sold his brother a horse, and had his money secured. See him following his brother with a pistol, to take the horse away from his brother before the note was due. See his conduct when he found his brother murdered. He went to where his body was, got his watch, left the body; went to Muskogee to get a warrant, as he said, but did not get it. He left his dead brother with strangers, and came back after dark and went and buried him in a plank box and after night. Take the circumstance that the day after the defendant came and told that Sam Morgan had gone to the Pawnee Agency, instead of Robert Morgan going to make inquiry of the man who brought the news, goes next morning and sues out an attachment and takes his brother's cotton crop, watch, his horse, and con-

verts them wholly to his own use, save, what he claims, he paid out. Take the fact that he had his brother's money, and instead of going to Muskogee and buying a coffin to put away his only brother, he put the money in his pocket and put his brother away in a goods box. Take the further fact that Robert Morgan, the brother of deceased, followed his brother just a week before deceased was missing, with a pistol, to take away a horse by force—deceased's own horse—and drove him away from his house.

If there had not been a horse-fever in that country, and a money scheme, Sam Morgan, in my opinion, would have been alive to-day.

Robert Morgan swears that William Burt came to his house on the first day of November, 1889, from Arkansas. Ramsey swears that Burt was there picking cotton for Sam Morgan ten to fifteen days before November, 1889. Hoyt swears that Morgan raised a crop of cotton on his farm in 1889, and that Burt was picking cotton for Sam Morgan on his farm at least ten days before Morgan was missing from the settlement. Kit Harris says he was there six to ten days before deceased left his mother's house. These are all Government witnesses. Take Burt's own statement, if it can be credited for anything. He first said on the stand he picked cotton for Sam Morgan, then he took it back. He stated he did not know where he staid all night on the night Sam Morgan was missing, but when he went out and had a chance to talk with Robert Morgan, three days afterward, he was called back to the witness stand to deny what he had solemnly sworn to. Did either one have a motive for taking the deceased's life? Burt swore

he did not have a penny when he went up into the Indian country. He swears he was up there about five weeks. He bought two suits of clothes, one cost him thirty-five dollars and one fifteen dollars, besides other things he bought. He boarded here in the town of Fort Smith at four dollars per week, which made sixteen dollars. He then went to Texas, two hundred and fifty miles, seven dollars and fifty cents each way, and had sixty-five dollars left. Where did he get the money? See Mrs. Harris' statement. She stated the evening before Sam Morgan, deceased, left her house, he had several bills, one she noticed was a ten dollar bill, and four or five others, but does not know how large they were, and a handful of silver, from eight to ten dollars: Where did Mr. Burt get his money? Five weeks would be thirty days. Losing no time, at 75 cents per day, would be twenty-two dollars and fifty cents. Where did he get the money? He proved he had one hundred and forty-five dollars in five weeks. Where did he get it. It was impossible for him to make it picking cotton at seventy-five cents per day? See Burt's conduct, after the defendant was arrested. He ran for Texas, instead of going back to the good people in the Indian country, where he made so much money in so short a time. He never showed his face to those good people any more. After he had sworn he did not know where he staid all night, on the night deceased was missing from the country, he sent for his cousin's wives to prove where he staid all night. After he found he could prove anything he desired, then it was he recalled where he staid all night. See his statement. He said he never sold any whiskey in the Indian coun-

try. "I went home to Charleston, Arkansas, I left my horse at Bragg's Station, come back by Fort Smith, bought two half pints of whiskey for my cousin Robert Morgan's wife, also for my cousin Colquet's wife, and when I got back to Bragg's Station to where my horse was, the same evening I left, it was late. I got lost in the bottom; I paid a man to pilot me out; I paid in whiskey and money." This is a lie, on its face. The train goes down to Charleston, or in about six miles of the place where he lived, and gets there at 1.50 p. m. and comes up at 2 o'clock p. m. Now he had to go six miles out from the railroad and six back in one-half hour—12 miles. But the most inconsistent story was: the Valley train left here at 1.30. So his tale is a lie, without foundation. What is all this lying about?

DEFENDANT'S STATEMENT.

He says, and the proof shows, he left on the 3rd day of November, 1889, in company with Sam Morgan, riding one of his horses. He says he and the deceased met Keys on the edge of the prairie, and they went a short distance and met a man in a buggy. Morgan and the man in the buggy went off in company with Keys, and left the defendant to wait for them to bring back some whiskey, and he sat down by Joseph Harris' fence and waited for them to return, and when the horses were brought back —Keys brought them back, and told him to keep the horses until December 1st, and if he did not get back to turn over the gray horse to his brother, and take Ramsey's name off the note, and if he did not get back by the 15th of December, to turn over the other horse to Colquet, and to gather his cotton crop and pay the

hands out of it and turn over the balance to Robert Morgan.

William Rider states he saw a carriage coming from the direction of Mrs. Bible's on the road defendant said they came, and this was about 12 o'clock, and was going in the direction of Coody's Creek.. This was the 3rd day of November, 1889.

Frank Lawless said he was on the prairie the same day, and he saw a carriage going the same direction, and at the same time, or about the time Rider and the defendant said the carriage passed on.

See John Hurst's testimony. He states: "He saw Sam Morgan in a carriage, between 4 and 5 o'clock, on November 3rd, 1889, and another man in the buggy with him, that he was well acquainted with Morgan, and there was another man in the carriage with him, with black whiskers on, and was introduced to him as his cousin. They went down in the direction where the body was found. About sundown there was a carriage came back from that direction. He says he followed the buggy tracks as far as the bars next morning. I never was here for anything. I was raised in the Cherokee Nation."

Now, at the time the carriage was seen, and the man in it was recognized, this defendant could not have done it, because he was back at home at 2 o'clock.

See the application filed on the 31st day of May, which set up that defendant could prove by one Meek that he saw Samuel Morgan and another man near Muskogee about 3 o'clock, coming in the direction of where Hurst says he saw the men. Then, if this is true, the defendant is not guilty.

Wilson Rider was recalled. See his statement in

chief, where he stated he was in the cotton-field from 25 to 30 yards from the fence, and the weeds were high and thick. He saw the defendant through the weeds, and knew he was riding a gray horse and leading a spotted horse. When he was recalled, by the defendant, asked: "If he met Bood out in the road between the two fields." He said: "No." He was asked if he did not tell George Williams when he, Williams, was working up the Government evidence, that he met defendant in the road between the two fields, and that you were acquainted with this defendant, that he boarded with you and made hay last summer. Answer, "No, sir."

George Williams, the Government witness, called by the defendant. Q.—"Did you have a conversation with Wilson Rider about seeing defendant leading some horses on the day Sam Morgan was missing from the country?" A.—"Yes, sir; he told me that he met the defendant between the fields, and he was riding the gray horse and leading the sorrel, and that he was well acquainted with the defendant. He boarded at his house last summer, making hay. I told told him I had been told he knew something about the matter. I told him I was working up the evidence for the Government."

This same Wilson Rider, who was to be the eye-witness, was and is a thief; has been in the penitentiary. This is the kind of evidence on which the Government relied to take the life of one of her fellow-citizens. Will any court, in the light of the facts in this case, sentence the defendant to a felon's grave, when all the substantial facts are in his favor? If there was ever a case of murder tried, where the evidence was

more conflicting. I have never been able to see it. The proof shows that the defendant and Sam Morgan were on the most friendly terms and had always been. Where is the motive that the defendant had for killing Sam Morgan? None shown! Sam Morgan had been in the asylum, and Robert Morgan did not want to be plagued with him through life. If Sam Morgan had never bought horses from Colquet and Robert Morgan on a credit, Sam Morgan would have been today walking through this beautiful land of ours.

Take the conduct of Burt all the way through the trial. He had never seen the defendant to talk with him until after the disappearance of Sam Morgan, and yet he could not tell whether he was standing or sitting when he saw the defendant and Morgan riding in a fast lope through the thick timber one hundred yards away; but could see defendant's face and nose that distance and identified him that distance. A lie on its face. He said he did not know where he staid all night the night Sam Morgan was said to be missing from the country; then in three days afterward, after he had seen Robert Morgan and Richard Colquet, and saw it would not do to let his statement stand, sent off for witnesses to prove where he staid that night. Who did he bring? Mrs. Robert Morgan, cousin, Mrs. Richard Colquet, a cousin to Mr. Burt.

Mr. James Lowry, who lives near the place where the killing was done, who could not and did not know where Mrs. Bible lived, nor where Will Keys lived, and, in fact, they lived in sight, not over 1200 hundred yards from him, and yet he did not know where they lived. Why was this? The only reasonable

conclusion is, there is more than one man knows about the murder. Any and everybody knows that Lowry was lying when he made that statement as to where Mrs. Bible and Keys lived. "FALSUS IN UNO, FALSUS IN OMNIBUS"—false in one thing, false in all.

Ramsey says Burt was there picking cotton ten to fifteen days before deceased was missing from the country.

Black Hoyt says that he was picking cotton for Sam Morgan ten days before Sam Morgan was missing. He says that Sam Morgan raised a cotton crop on his place, and that is the reason he knows Burt was picking cotton for Sam Morgan. He was around when the cotton was weighed up, as he was to have half of what was raised on the farm.

Christopher Harris says Burt was there before the first day of November, 1889. Why all this lying about such important facts? Think of a man not on trial, a man who could not be so interested in a matter like this, so as to swear straightout lies, unless there is something behind the matter? This explains the further fact, who had the motive to take Sam Morgan's life.

See the conduct of this man Burt. See the amount of money he gathers in so short a time, living with his cousins, Robert Morgan and Colquet. He commenced with them, without one cent in his pocket, and in five weeks had two suits of clothes, costing him fifty dollars; in short, he had gathered one hundred and forty dollars. See how Robert Morgan and his wife, Colquet and his wife, James Lowry and George Williams tried to swear that Burt was at a certain place, which he, himself, could not do. Why do this?

We have shown Morgan had a motive to get rid of his brother. His conduct shows that fact.

Look at Colquet's conduct.

See James Lowry's statement. He made a false map, placing the prisoner at least one mile southwest from the place where the prisoner was. When he was asked to explain the prisoner's map he said: "I do not understand your map." See the question: "Point out where Mr. Keys lives." Said: "He did not know of such a man." And, in fact, he had lived by him for ten years, within three-fourths of a mile of him. When asked to point out on the defendant's map where Mrs. Bible lived, said, as before, "I do not understand your map. I do not know where Mrs. Bible lives." And in fact, she lives within sight of his farm, and has lived there for ten years. Why all this lying? This explains why James Lowry made the statement to corroborate Robert Morgan and wife, Colquet and wife; and William Burt, when asked, did not know where he staid himself. Burt must be corroborated. This kind of evidence shows a falsehood on its face. These are all government witnesses. All this evidence goes to show where Burt staid on Sunday night,

Mr. Robert Morgan, this innocent man, who never did a wrong in his life, who sold his brother a horse, and had his money secured by Ramsey, took his pistol and followed his brother three miles, to take away his brother's horse that he had partly paid him for, and before the money was due; then take this innocent man, who found his only brother five hundred miles away from his father's house, murdered; he robbed him before, of everything he could get his

hands on, and then was not satisfied; he went to the place where his brother was taken from a hole in the ground, and got his watch, and leaves his dead brother lying on the ground, and went to Muskogee, and came back with a lie in his mouth: said he went up there to get a writ for this defendant. And when questioned close about it he never swore out any papers for this defendant, but came back home, and then went and put his brother away in a goods box, after night. He took all his brother possessed, and still this innocent man would not and did not even buy a coffin in which to give his brother a decent burial! Any motive in this kind of conduct? Remember, Burt left Charleston, Arkansas, on the first day of November, 1889, and landed at Robert Morgan's on the same day. Ramsey, a Government witness, says Burt was there at Morgan's, picking cotton for Sam Morgan, ten days before Sam was missing. Black Hoyt says: "I know Burt was picking cotton for Sam Morgan some time before Sam Morgan was missing. Sam Morgan raised his crop on my place, and I overseed the weighing the cotton, and I know Burt was there some time before Sam Morgan was missing." Christopher Harris says he was there before the first of November. If these gentlemen had no consciousness of guilt, why lie about the matter? This needs no interpretation. It shows perjury, and subornation of perjury, upon its face.

Take the statements of witnesses; see the motive they had for making these statements; then take the statements made by disinterested witnesses, to-wit-Ramsey, Black Hoyt, Christopher Harris; contrast their evidence with the five witnesses, to-wit: Robert

4 Snead, p. 428.
Hagan v. State, 5 Bax. 615.
State v. Turner, 6 Bax., p. 201.
12 Tex. Court of Appeals, 208 to 214.
8 Tex. Court of Appeals, 382.

See the application filed on the 31st day of May, 1890, after the trial had began, which witnesses applied for in said application, were material to defendant on his trial. Defendant states that he was not advised of this testimony until the morning of the 31st day of May, 1890, the same morning the application was filed. If the Court had permitted the witnesses brought for defendant it would have strengthened the defendant's evidence.

There were three applications filed in this cause; two applications were allowed. Some four weeks before the day of trial the subpoena was returned NON EST twice. The subpoena set out where the witness lived. We could not reach the witness. John Hurst, after pointing out the place where he lived (we were about to be pushed into trial, anyhow, witnesses or not), so we hired a Government witness to go and serve the subpoena at our own expense, $9.75. Philow Harris was the man. He returned and said he did not find the witness. We then paid Kit Harris $10 to go and get the witness, another Government witness, He went straight to where the witness lived and brought the witness, John Hurst. This shows whether the defendant used diligence in trying to prepare his case. All this was done at the expense of the defendant. The Government refused to pay the defendant back the money for serving the subpoena.

Defendant did not know what his witnesses would swear to and could not know only what his attorneys would tell him, for he was locked up in jail and he had no chance to know what was going on except what was told to him. When the applications were drawn up, the attorney that drew them up wrote them in accordance with the information he had derived from outside parties, and in order to get those witnesses it is necessary under the law to state such facts as defendant expects to prove by them, and in so doing the defendant swears to them in that way. So there is nothing in the application as going to contradict defendant's evidence, and the applications are incompetent and irrelevant, and ought not to have been allowed to go the jury.

The Government does not seek the life of a fellow-citizen on irrelevant testimony, but seeks to protect her citizens by holding the Government strictly to prove the guilt of the defendant, and that beyond a reasonable doubt, and by legal and competent evidence, which the Government failed wholly to do, etc.

A. H. GARLAND.
Attorney for Defendant.

The counsel in the court below for Crumpton (appellant) not being an attorney in this court, requested the use of my name in presenting his argument in this case which was granted, and the foregoing is the brief he prepared under that privilege.

Respectfully,
A. H. Garland

Nov. 13/90.

Office Supreme Court U. S.
FILED.
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JAMES H. MCKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

BOOD CRUMPTON ALIAS BOOD Burris, plaintiff in errror, *vs.* THE UNITED STATES. } No. 1310.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

BOOD CRUMPTON ALIAS BOOD BURRIS, plaintiff in error,
vs.
THE UNITED STATES.

No. 1310.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

THE CASE.

This is a writ of error sued out under the sixth section of the act of Congress passed January 25, 1889 (25 Stats. at Large, 656), to a judgment of the circuit court of the United States for the western district of Arkansas, imposing a sentence of death upon the plaintiff in error for the crime of murder. The writ of error was obtained before the adoption and promulgation of the thirty-fifth rule of this court regulating the procedure under the above-named act, and it is presumed that the rule will not be enforced as against the present plaintiff in error so far as it requires a statement of the errors assigned in the petition for the writ of error filed in the court below.

ARGUMENT.

There was only one exception taken to any of the rulings of the court below by the defendant. That is to be found on page 287 of the record. It is based on the refusal of the court to grant an application by the defendant for process for three witnesses, the same to be executed at the expense of the Government of the United States. The trial was begun on the 27th of May, 1890. The application was not made until the 31st of May, 1890 (Record page 197), just before the defendant was called as the last witness in his own behalf. The prospect when this application was filed was that the case would go to the jury upon Saturday. As a matter of fact, a small amount of evidence was introduced upon Monday. It would clearly have delayed the trial a number of days to issue process into the Indian Territory, and have it served there and to bring in these witnesses to testify. Moreover, the character of the evidence proposed to be introduced was, nearly all of it, incompetent.

It was entirely irrelevant to the issue whether William Burt was a noted whisky peddler or not. It was proposed to summon or call one Brewer to prove that fact. Burt had been asked on the stand whether he was not a whisky peddler, for the purpose of disparaging the witness and affecting his credibility. It was proper to allow such a question upon the cross-examination of Burt for that purpose. The rule clearly is, however, that where the adverse party is allowed to ask such a question of a witness he is bound by the answer, and can not introduce evidence to contradict it.

The second witness proposed to be called was Lige Kelley, and it was said that by him it could be proven that Burt was standing and talking with some parties unknown to defendant, and in conversation, and that as soon as Kelley walked up Burt said, "Hush; Kelley is coming up; we have fixed on the right man and we don't want it disturbed." There was some evidence in the case tending to show that Burt was the last man seen with the deceased given by a witness named John Hurst. (Record, pages 170–196, inclusive.) It was proposed by this new witness, presumably, to show that Burt was engaged in a conspiracy to convict Crumpton, the defendant, of the crime of which he himself was really guilty.

The evidence as stated, however, would have been wholly incompetent for that purpose. It does not appear whether this conversation was before or after the disappearance of Morgan; it does not appear where it was had; it does not appear with whom it was had. All these circumstances must have been known and stated in order to make the evidence competent and relevant.

The third witness, Robert Meek, it was said would testify that "he saw Sam Morgan (the deceased) at or near Muscogee on the 3d day of November, 1889, alone and in a carriage," and that "said Meek lived in Muscogee at that time, but now lives in Oklahoma, as defendant is advised." Had this fact been proven it must be conceded that it would tend to disprove the guilt of the defendant. It will be seen, however, that the witness lived in Oklahoma, a country considerably further removed from Fort Smith than the Cherokee Nation, where this crime was committed. It would lead to a long delay in

the trial, therefore, to wait until he could be brought in. The place of residence of the witness is not stated, nor does it appear by the affidavit of Crumpton that he did not know of these witnesses before the trial.

The question whether a trial shall be delayed for witnesses; whether the presence of those witnesses might have been obtained by due dilligence, so as not to delay the trial, and how material such witnesses are to the case of the party who seeks their attendance, are all matters for the trial court to pass upon. Their decision rests entirely in the discretion of the court, and the ruling of the court on such a matter, unless there should be an abuse of discretion, can certainly not be assigned for error here. Such a question arises in the conduct of the trial, and is a part of the procedure almost wholly under the control of the trial court and not subject to revision by the Supreme Court.

This, as has been said, is the only exception reserved on the record, and is, it is submitted, under the ruling in the case of *Railroad Company* vs. *Heck* (102 U. S. R., 120) the only matter which the court can consider on this writ of error.

Out of abundant caution, however, it is deemed proper to consider the grounds for a motion for a new trial, to be found on page 210 of the record.

The first ground is that the verdict of the jury was contrary to the evidence.

The second is that the verdict was contrary to both the law and the evidence.

If the court desires to consider these grounds fully they

must read the evidence. When that is done we are sure that no doubt will remain in the mind of the court that the verdict was fully sustained by the evidence in the case. The Government showed first that the deceased, had, on the 3rd of November, about $50 on his person, (see testimony of Mattie Harris, page 46); that on the morning of that day—which was Sunday—after having slept the night before together, the defendant and the deceased, riding two horses belonging to the deceased, started out from the house of Mrs. Harris to go, as they said, to visit some girls by the name of Davis who lived about 4 miles away. The defendant was armed with a pistol in his belt.

About noon of that day shots were heard by a witness for the Government in the neighborhood of the hole where the body of the deceased was afterwards found, and in a short time the defendant was seen riding one horse and leading the other away from this place. Toward evening of the same day the defendant returned to a house in the neighborhood of Mrs. Harris's, with the two horses. When inquired of as to the deceased he said that they had met a man riding in a buggy on the prairie who had induced the deceased to go with him to the Pawnee Agency. He stated that the deceased had directed him to bring the horses back; to take charge of all his effects, and to pay his debts in case he did not return by a certain time.

Three days before Christmas the body of the deceased was found in the hole above referred to, which was some 6 or 7 feet deep, on the bank of Coody's Creek, and some 3 miles from Mrs. Harris's. His hat had a bullet hole in it, and his broken skull showed where the bullet had entered it and caused his death. There was no doubt, from

what was found on his person, as to whose corpse it was, though the face and front part of the skull had been battered so as to prevent recognition of the features. No money was found in the pockets of the deceased.

It appeared from other evidence, and was admitted by the defendant, that sometime before the disappearance of the deceased the defendant had come upon this hole and was familiar with its location. There was evidence to show that an overcoat belonging to the deceased was in the possession of the defendant the next day after the disappearance of the deceased. Before the finding of the body on the 22d of December, the defendant exhibited two letters which he claimed to have received from the deceased at the Pawnee Agency. They were letters without envelopes. The explanation of the absence of the envelopes by the defendant was that the children had destroyed them. On the trial the letters themselves could not be found by the defendant and were not produced. When the body of the deceased was found, and the report of it came to the defendant, the defendant immediately left the settlement in which he lived and went away some 20 or 25 miles, where he was arrested.

The evidence for the defendant was of the most conflicting character. One man testified that he saw a Government witness, Burt by name, in a carriage with the deceased on the Sunday in question going one way, toward the place where the body was found, and that later he saw him returning without the deceased. This evidence was wholly at variance with the statement of the defendant himself, who swore that the man in whose buggy the deceased drove away was not Burt. The evidence of the

defendant, taken by itself, is so utterly improbable as to strengthen the case for the Government.

The defense consisted in attempts to fasten the crime on several different persons. One witness's testimony would put it on Robert Morgan, a brother of the deceased; another on William Burt; and a third upon a man named William Keyes; though the evidence to show that none of these men were connected with the crime by proof of their whereabouts during the entire day when the deceased disappeared was ample and convincing. Even if this court were sitting as a jury, it may be affirmed without hesitation that it would reach the same conclusion that the jury in the court below did.

The third ground for the motion for a new trial was a statement of the district attorney to the jury in his argument. It appeared (Rec., p. 310) "that during the argument of the case before the jury, defendant's counsel, Berkeley Neal, esq.," said to the jury "Either the defendant or Burt is guilty of this crime. I will show you that Burt is guilty, and therefore that the defendant is not," and that the district attorney, in closing his argument, said, "The issue is squarely made by Mr. Neal, that either the defendant or William Burt is guilty of this crime. I have shown you that Burt is not guilty; therefore by his logic the defendant is guilty."

No objection was made at the time to this argument. The court was not requested to interrupt it or to caution the jury against its force, and no exception was taken. It is by no means clear that the argument of the United States attorney in presenting the question of fact to the jury was not a legitimate one. He might well argue that

the evidence was wholly inconsistent with the innocence of the defendant; that nothing could reconcile the facts of the case with his innocence except Burt's guilt; that the hypothesis of Burt's guilt was wholly untenable; and, therefore, that no theory could be entertained by reasonable men except that the defendant himself was guilty. But it is not material whether this was a fair argument or not. When the court's attention is not called to a departure by counsel from a legitimate line of argument, and no objection is made to the argument at the time, and no exception is taken, it is obviously too late to make that objection upon a motion for a new trial.

The fourth ground of the motion for a new trial is on the refusal of the court to grant sufficient time for the defendant to procure the testimony of the witnesses, Meek, Kelley, and Brewer. This ground has been considered above.

The fifth ground is that the defendant has discovered since the trial new testimony material to his defense. There is no statement of what the new evidence is. This ground was of course for the consideration of the trial court only, and a decision by the court upon it can not be reviewed here.

On the whole record there is no error justifying a reversal of the judgment.

Respectfully submitted.

WM. H. TAFT,
Solicitor-General.